

Exhibit E

Transcript of Detroit City Council Public
Hearings on April 8, 2008

Committee of the Whole
Legislative Hearings
2 Woodward Avenue, 13th Floor
Detroit, Michigan
Tuesday, April 8, 2008
9:05 a.m.

APPEARANCES:

DETROIT CITY COUNCIL
MEMBERS:

KENNETH COCKREL, JR.
MONICA CONYERS
KWAME KENYATTA
MARTHA REEVES
BRENDA JONES
JOANN WATSON
SHEILA COCKREL
ALBERTA TINSLEY-TALABI
BARBARA ROSE-COLLINS

SPECIAL COUNSEL:

WILLIAM GOODMAN, ESQ.

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1 Detroit, Michigan

2 Tuesday, April 8, 2008 - 9:05 a.m.

3 * * * * *

4 P R O C E E D I N G S

5 COUNCIL PRESIDENT COCKREL: Good
6 morning.

7 MULTIPLE SPEAKERS: Good morning.

8 COUNCIL PRESIDENT COCKREL: At this
9 point in time I would like to call and adjourn this
10 hearing until 9:30. I've been informed by City
11 Council special outside counsel on this matter,
12 William Goodman, that our first witness who will be
13 subjected to questioning will not be available until
14 9:30. So that being the case, this hearing will
15 stand adjourned until 9:30.

16 He is here?

17 MR. GOODMAN: He's here.

18 COUNCIL PRESIDENT COCKREL: Oh, he is?
19 All right. Well, is Mr. Goodman here though, that's
20 the question?

21 MR. GOODMAN: We're ready.

22 COUNCIL PRESIDENT COCKREL: Because I
23 know yesterday you were saying 9:30.

24 MR. GOODMAN: Only because Mr. Stefani
25 told me that he might not be here until 9:30.

1 COUNCIL PRESIDENT COCKREL: Well, even
2 though -- even though it appears now Mr. Stefani is
3 here, because of the fact that the word was put out
4 to come -- he wouldn't be available until 9:30, we
5 are going to adjourn this until 9:30, and we'll
6 reconvene at that time.

7 (WHEREUPON, a brief recess was taken
8 from 9:05 a.m. to 9:31 a.m.)

9 COUNCIL PRESIDENT COCKREL: Good
10 morning.

11 MULTIPLE SPEAKERS: Good morning.

12 COUNCIL PRESIDENT COCKREL: I would
13 like to call this hearing to order, and this is the
14 first City Council hearing for the purpose of
15 conducting questioning of a number of individuals
16 involved in the case of the settlement of Brown,
17 Nelthrope, and Harris versus the City of Detroit, and
18 we have a long day -- actually days ahead of us,
19 because this is the first of what will likely end up
20 being three days of questioning that will be taking
21 place during the course of this week.

22 So before we go ahead and proceed with
23 our first witness, I would like to introduce for the
24 record at this time Mr. William Goodman, who is the
25 special counsel that has been retained by City

1 Council to represent our interests in this matter.
2 He will make a couple of brief introductory comments,
3 as well as lay the groundwork and set the stage for
4 what follows today and the succeeding two days.

5 Mr. Goodman.

6 MR. GOODMAN: Thank you very much, Mr.
7 President and members of Council. Speaking on your
8 behalf, and also on my own as a person who attempted
9 at least to -- to organize and put together this
10 hearing, I want to welcome all of you, and all of the
11 members of the public, the media, and so on, who are
12 out here today, and I appreciate everybody's
13 participation and presence.

14 It's really a great honor for me to be
15 representing the Detroit City Council in this
16 proceeding, and particularly in this proceeding.

17 This proceeding demonstrates that this
18 Council's effort to bring honor both to this body and
19 the City of Detroit will succeed, and I'm really
20 proud of -- of this, and of -- of this institution.
21 In the end, this hearing is about the most
22 fundamental precept of government; that the voice of
23 the people must be heard and must be minded.

24 Three Detroit police officers, and
25 from everything I know, honorable Detroit police

1 officers, Gary Brown, Harold Nelthrope, and Walter
2 Harris, sued the Mayor of the city of Detroit for
3 making their lives miserable in firing them, at least
4 some of them, when they blew the whistle on the Mayor
5 -- and I used the phrase "blew the whistle" in
6 quotation marks -- on the Mayor for using the Detroit
7 Police Department to protect his own -- to serve his
8 own personal pleasure and needs, rather than those of
9 the City of Detroit.

10 Two them, Harris and Nelthrope,
11 finally went to trial after many years, and won. The
12 verdict was six and a half million dollars, not
13 including interest and not including attorney's fees.
14 Very shortly thereafter, all three cases were settled
15 for \$8.4 million dollars, and a secret agreement not
16 to publicly disclose certain damaging information.

17 This secret agreement was what we now
18 know to be the Confidentiality Agreement, and all of
19 you have a copy of that. Last October, this body was
20 asked to consent to and approve that settlement, but
21 it was not told that the intrinsic part of the
22 settlement was the Confidentiality Agreement. In
23 fact, the Confidentiality Agreement was intentionally
24 concealed from this body.

25 Our job will be two-fold. First to

1 determine what happened when Council was asked to
2 approve the Brown/Nelthrope/Harris settlement; what
3 it was told and not told. The simple question in
4 this part of the hearing must be why was the
5 Confidentiality Agreement not disclosed to the
6 Detroit City Council. But far more importantly, it
7 will be up to this body to hear evidence and weigh
8 our options to implement measures that will prevent
9 anything like this from happening in the future.
10 What structural changes must be made so Corporation
11 Counsel can fully and completely advise City Council
12 without fear of antagonizing the Mayor, or anyone
13 else. In other words, with the simple tool that is
14 always owed by a lawyer to his client; the good,
15 decent, complete advice that is most by conflict of
16 interest, secret agendas -- I should say most
17 undermined by conflict of interest, secret agendas,
18 and private concerns of the powerful.

19 These hearings will be primarily
20 policy-driven, and it may fairly be asked, with this
21 City beset by so many serious problems, how can this
22 body spend this precious time reliving the past?
23 Past mistakes (inaudible). The only answer is, as
24 the philosopher -- American philosopher, George
25 Santayana said: "Those who refuse to study and learn

1 from the mistakes of the past are doomed to repeat
2 them."

3 This body, the Detroit City Council,
4 fully and completely understands that its obligation
5 to the people of the city of Detroit is to conduct
6 these hearings in order to learn from our present
7 recent past and move forward. As we do that, we will
8 tell the world that this city will survive and it
9 will overcome its current crisis.

10 Need I even mention that as a result
11 of these events, the Mayor of the city of Detroit and
12 his former chief of staff have been charged with
13 multiple felonies by the Wayne County Prosecutor?

14 Members of Council know, but the
15 public and media may not, that the members have
16 before them a collection of significant documents
17 surrounding the incident and this series of events.
18 We will go through some of these documents during the
19 next several days.

20 Today we will hear from three
21 witnesses; attorneys Michael Stefani and Wilson
22 Copeland, who played instrumental roles during the
23 Brown/Nelthrope litigation, trial, and settlement;
24 and professor Bridget McCormack, who teaches law at
25 the University of Michigan, and who specializes in,

1 among other things, legal ethics and professional
2 responsibility. In the two more days of hearings
3 that will follow, we will hear from other attorneys
4 involved in the case and its settlement.

5 I want to thank those lawyers, thank
6 them deeply for coming forward. Everyone in this
7 community knows that there is an ongoing
8 investigation by the Wayne County Prosecutor.
9 Everyone knows that there is an ongoing investigation
10 by the Attorney Grievance Commission of the State Bar
11 of Michigan. These lawyers could easily avoid the
12 requirement to testify before us, to assist us,
13 simply by invoking their legal and constitutional
14 rights. Nonetheless, they have chosen to appear
15 before us and answer questions. Some of them very
16 difficult. Some of the questions very difficult.

17 We will hear as well from two more
18 experts who are prepared to answer questions as to
19 how this body can find ways to protect itself; that
20 is two more experts in addition to the one we will
21 hear today. And protect -- this body can protect
22 itself and the people of this community from secret
23 deals designed to protect private interests, and not
24 those of this community.

25 In the end, it is my profound hope

1 that these hearings will allow this body to function
2 more effectively, more productively, and best serve
3 the interests of the people of the city.

4 Thank you very much.

5 COUNCIL PRESIDENT COCKREL: Thank you
6 very much, Mr. Goodman, for that introduction.

7 The next item of business is we're
8 going to proceed directly to our questioning of our
9 first witness, who is Michael Stefani. So I'd like
10 to ask him to come forward, and because the testimony
11 that we've taken during these hearings is to be taken
12 under oath, if you could come forward here, and Ms.
13 Jami Monte, who is our court reporter, will
14 administer the oath.

15 COURT REPORTER: Please raise your
16 right. Do you solemnly swear or affirm to tell the
17 truth, the whole truth, and nothing but the truth, so
18 help you God?

19 MR. STEFANI: Yes.

20 COUNCIL PRESIDENT COCKREL: Take a
21 seat at the table there.

22 And the way in which the questioning
23 will be done is an initial set of questions will be
24 conducted by our special outside counsel, Mr.
25 Goodman, and at that point, we will go into

1 questioning from individual council members. I
2 already have a number of council members who've
3 indicated they want to speak on this, and whoever
4 wants to be added to the list, let me know.

5 MS. LEAVEY: Mr. Chair?

6 COUNCIL PRESIDENT COCKREL: Yes, Ms.
7 Leavey?

8 MS. LEAVEY: If I may, I want to make
9 sure that the record is very clear that each witness
10 has been given their rights. That they have been
11 told that they are not required to incriminate
12 themselves. That they are allowed to have a lawyer
13 to represent them. And even though these are
14 lawyers, we do want to make sure it's very clear on
15 the record that they have been advised of their
16 rights, particularly since this transcript will be
17 made available to Prosecutor Worthy. Thank you.

18 COUNCIL PRESIDENT COCKREL: I think
19 everyone is clear on that. Are you all clear --

20 MR. GOODMAN: Mr. Stefani, you
21 understand that as well, I assume?

22 COUNCIL PRESIDENT COCKREL: All right.
23 Mr. Goodman, you can proceed with the initial line of
24 questioning. And again understand of course that
25 while we're retaining you and paying you well, we

1 want you to keep your questions to the point and
2 brief so that we can get to our colleagues.

3 MR. GOODMAN: Because you're paying me
4 to keep my questions brief -- I will keep my
5 questions as brief as -- I -- I certainly will have
6 that in mind as a -- as we proceed.

7 MICHAEL STEFANI

8 DULY SWORN, CALLED AS A WITNESS, TESTIFIED AS FOLLOWS:

9 EXAMINATION

10 BY MR. GOODMAN:

11 Q Please tell the members of Council your name, sir?

12 A Michael L. Stefani.

13 Q And your profession?

14 A I'm an attorney.

15 Q How many years have you practiced law?

16 A Since about 1969.

17 Q And before '69, what did you do?

18 A I was in law school.

19 Q Let me put it this way; have you been an agent for
20 the Federal Bureau of Investigations?

21 A Oh, yes. For the first three years, '69 to '72, I
22 was a special agent with the FBI, and towards the end
23 of that time, I became functioning as a lawyer for
24 the FBI, handling search warrants for special squads.
25 That's why I included the time in the FBI as

1 practicing law, because I really was, even though I
2 wasn't in Michigan.

3 Q Yes, of course. As well, what area of law do you
4 specialize in, or areas of law do you specialize in,
5 Mr. Stefani?

6 A Well, I'm primarily a business lawyer. I have a
7 master's degree in taxation -- master's in law and
8 taxation from Wayne State, and I primarily represent
9 small and medium-sized corporations in various tax
10 issues, business issues, real estate issues. And as
11 more or less a subspecialty, I developed a
12 subspecialty in whistleblower litigation.

13 Q In that connection -- first of all, you understand
14 that these hearings today revolve around the issue --
15 issues in connection with the settlement of cases
16 that you recently handled on behalf plaintiffs; is
17 that right, sir?

18 A Yes, sir.

19 Q Just to give the members of Council a little
20 background, could you just very briefly describe the
21 claims of your clients, Gary Brown, Harold Nelthrope,
22 and Walter Harris?

23 A Yes, I can. Gary -- Harold Nelthrope and Officer
24 Harris -- Walter Harris, were assigned to the Mayor's
25 Executive Protection Unit, and while they worked as

bodyguards for the Mayor, they had occasion to view what they considered to be misuses of power and misuses of the EPU, especially on the part of two of the Mayor's sort of favored bodyguards, and Nelthrope eventually went to internal affairs and reported what he thought were crimes and improper conduct on the part of these two members of the Executive Protection Unit, Mike Martin and Greg Jones. When his reports came to the attention of Gary Brown, Gary Brown initiated an investigation of those charges, and as a result of his initiating that investigation, after approximately 25 years with the Detroit Police Department and an unblemished record, he was abruptly terminated on May 9th, by the chief of police. Shortly after that, Nelthrope began -- Nelthrope was -- his identity as the source of information to internal affairs; in other words, the person who blew the whistle on the Mayor's bodyguards was revealed to the press, and it came out in the newspaper, and Nelthrope came home from work one day and found a whole gaggle of reports in front of his house, holding a -- an internal Detroit Police Department memo marked confidential, that -- that showed that Nelthrope was the source of this information. So in the course of that investigation, the attorney

1 general and the state police conducted their own
2 investigation, and Walter Harris, who knew a lot
3 about the Mayor's activities with his bodyguards,
4 came forwarded and defended Nelthrope. The Mayor, on
5 TV, called Nelthrope a liar, and Harris told the
6 state police that Nelthrope's an honorable man; what
7 he's saying is true. And as a result of that, Harris
8 began being discriminated against by his supervisors.
9 He was accused of stealing money from motorists that
10 he stopped. In any event -- and sometimes
11 descriptions of officers involved were way off base.
12 For example, there were -- he was blamed for an
13 incident where an officer who was five-six with a
14 white female partner apparently did something
15 improper; stole money from a motorist or something.
16 They -- his -- his supervisor said well this must be
17 Harris. And Harris is six-five and weighs 260 pounds
18 and his partner was black. So it was clear that he
19 was being blamed for complaints that related either
20 to other officers or maybe related to no officers at
21 all.

22 A Mr. Stefani, I don't want to cut you off; however, we
23 do -- just want to keep it brief, and I think that's
24 a brief description. As a result of all of that,
25 both Nelthrope and Harris were essentially

1 constructively discharged or forced out of the
2 Detroit Police Department; is that correct?

3 A That's correct.

4 Q And was you said before, Deputy Chief Brown, who I
5 called a police officer -- I hope that was no -- not
6 a -- ignoring your title at all, Chief Brown -- he
7 had already been fired. So all three of them lost
8 their jobs; is that right?

9 A That's correct.

10 Q And you started -- and I'm going to proceed by a few
11 leading questions here to get us to the -- to the --
12 cut to the chase. You started two separate actions;
13 one on behalf of Chief Brown and Officer Nelthrope,
14 and another on behalf of Office Harris. Is that
15 correct, sir?

16 A That is correct.

17 Q And eventually, the -- the Brown and Nelthrope case
18 came to trial just last August and September; am I
19 right about that, sir?

20 A You're correct.

21 Q All right. Now, let's back up for just a moment.
22 When did you initially file the Brown and Nelthrope
23 litigation?

24 A In June of 2003.

25 Q And it did not come to trial until late 2007; is that

1 right?

2 A August of 2007.

3 Q And then that would have been fours years of
4 litigation, including things like depositions, and
5 documents that were produced, and subpoenas, and all
6 of those kinds of things; is that right?

7 A Correct.

8 Q And that involved -- included, in addition, appeals
9 on -- in the Brown/Nelthrope case; is that right,
10 sir?

11 A That is correct.

12 Q Just very quickly describe the -- without going into
13 the issues in too much detail, which may be more of
14 interest to lawyers than it is to the members of the
15 Council, although they may have questions about it,
16 where did the case go on appeal? It went to the
17 Court of Appeals, I believe --

18 A The -- the initial appeal was through -- brought by
19 the Free Press that went to the Court of Appeals.
20 Then in December of 2004, the judge made a ruling
21 denying the City's motions for summary disposition,
22 and granting Nelthrope's motion for summary
23 disposition. The City appealed all those to the
24 Michigan Supreme Court or to the Michigan Court of
25 Appeals. That took about a year and a half. The

1 Court ruled in our favor, and then the City went for
2 rehearing before the Michigan Court of Appeals, you
3 know, in a second bite at the apple so to speak, and
4 that was denied, and then they took the appeal to the
5 Michigan Supreme Court, and eventually about a year
6 after they appealed to the Supreme Court, the Supreme
7 Court clarified the law and affirmed, in most
8 respects, Judge Callahan's decision, although the
9 lower court -- the Court of Appeals did reverse the
10 summary disposition in favor of Nelthrope, and said
11 that Nelthrope had to go to trial just like Brown.

12 Q In the course of all of this period leading up to the
13 trial, but not including the trial, were there ever
14 discussions between you on behalf of the plaintiffs,
15 and the lawyers who represented the City of Detroit,
16 the Mayor, and other defendants in these cases, were
17 there ever discussions of settling these cases?

18 A Yes, there were. Although we never received an offer
19 from the City, the initial trial judge, Judge
20 Tertzag, sent us to facilitation; that is where you
21 go to a neutral lawyer, usually an ex-judge, and he
22 tries to settle the case by pointing out strengths or
23 weaknesses. And I believe we did that in -- I think
24 it was November of 2003, and the City had absolutely
25 no interest in -- or inclination to settle the case,

1 and that's what the facilitator told us. He came
2 back and said, you know, you guys -- they're --
3 they're not even responding in a reasonable way.
4 They have no authority -- he said, "As far as I'm
5 concerned, you're wasting your time." So we went
6 ahead with the trial. And at various times -- I mean
7 ahead with the case, discovery, and at various times
8 I would bring up settlement, because, you know, as --
9 as everybody who's a lawyer and does this kind of
10 work knows, that you're always better off settling
11 the case if you can, because you never know what a
12 jury is going to do. And I -- I think my most recent
13 offer was actually made in August of 2007, two weeks
14 before the trial started --

15 Q I -- I'm putting those in front of you, because there
16 are documents that may be helpful to you in there.

17 A Okay. As I said, in August 2007, Ms. Osmauede, Mr.
18 McCargo, and Mr. Copeland came to my office for the
19 purpose of -- of deciding -- before you go to trial,
20 you have to try to stipulate as to what -- what
21 evidence will be introduced; that way there's not an
22 argument about every paper that's introduced. And in
23 the course with that meeting in my office, I asked
24 them to consider settlement, and they said that they
25 would consider settlement if I would consider

1 starting at ground zero. In -- in other words, up to
2 that time in August of 2007, I said I would talk
3 about settlement, but the settlement would have to be
4 a minimum of what the case evaluation panelists
5 recommended.

6 Q Now, you haven't mentioned the case evaluation, so
7 could we just briefly tell the -- the members of
8 Council here what that is and what happened during
9 the case evaluation; just very quickly?

10 A Yeah. Case evaluation -- most people know it as
11 mediation. Case evaluation is just a new name for
12 it. You -- you take a case before three lawyers, and
13 the -- the parties aren't there, it's just the
14 plaintiff's lawyer and the defendant's lawyer, and
15 they submit sort of a brief and they tell these three
16 judges why -- three lawyers why they think they'll
17 win, and the evaluators' job is not to do justice. I
18 mean you could be 100 percent correct and they won't
19 return a verdict 100 percent in your favor. They
20 make a recommendation to settle the case. And, as I
21 say, even if you're 100 percent correct, they're not
22 going to give you 100 percent, because they know the
23 other side won't settle. So, they have to give the
24 other side something. So, in this case, they awarded
25 us -- Harold Nelthrope a million one, and Gary Brown

1 \$1,250,000.00, and that has been my bottom line in
2 settlement discussions. I had several discussions
3 with Ruth Carter and Ms. Osmauede, but I always took
4 the position that we weren't going to settle for less
5 than that, because that's usually the low end of what
6 you can expect to get when you get in front of a
7 jury.

8 Q Now, that bottom line was then \$2,350,000.00?

9 A That is correct.

10 Q And in the -- let me just say that I -- if you pick
11 that blue -- little blue volume there, the tab number
12 one, I believe, has a letter from you and --

13 MR. GOODMAN: And members of the
14 Council, you'll find this under tab number one, with
15 the letterhead Stefani and Stefani.

16 BY MR. GOODMAN:

17 Q Do you see it, Mr. Stefani?

18 A Yes, I do.

19 Q If you turn to the second page, we have highlighted -
20 -

21 MR. GOODMAN: And I hope everybody's
22 copy is highlighted behind that.

23 BY MR. GOODMAN:

24 Q Your demand in this letter. This letter was dated
25 February '07, so this was several months before the

1 meeting that you talked about with Ms. Osmauede and -
2 - and Mr. McCargo, and I think you said Mr. Copeland
3 was there as well; is that right, sir?

4 A I believe so, yes.

5 Q In August of --

6 A Yes.

7 Q So this seven or eight months before that, and it
8 appears that your written demand in this letter is
9 \$2.1 million on behalf of -- I guess that's Mr.
10 Nelthrope --

11 A Nelthrope.

12 Q -- and --

13 A Two-point-two on --

14 Q -- two-point-two on behalf of Chief Brown; is that
15 correct, sir?

16 A That is correct.

17 Q So, was -- was -- well, let me just ask you; have --
18 was this your demand at this point, and did it
19 continue to be your demand through August of '07?

20 A Yes, it did, with -- with one caveat. This -- this
21 letter that I made -- this offer was made before the
22 Supreme Court ruled on the case. In May of that
23 year, the Supreme Court came back and ruled in our
24 favor, and the City and Morley Witus, wanted to
25 submit the case to facilitation again. In other

1 words, go back before this neutral former judge or
2 lawyer, and if -- but if we did that, it would mean
3 the case couldn't start trial in -- in August or
4 September. So I told Mr. Witus I would be willing to
5 adjourn the trial from September until the end of
6 October, but the only stipulation I would put,
7 because the prior case we -- the prior experience we
8 had with the facilitator -- he said nobody had
9 authority and they weren't serious -- I said I'll put
10 it back to Oct -- the end of October and go to
11 facilitation, but you have to agree that we start
12 facilitation at the mediation award; that is, at the
13 \$2.35 for both lawyers, and he said --

14 Q Both -- wait, for both --

15 A Plaintiffs, Brown -- instead of what I'm asking here,
16 I'm asking \$2.2 for Brown and \$2.1 for Nelthrope
17 before the Supreme Court. After the Supreme Court
18 decided in our favor, I said, "I'll submit it to
19 facilitation, but, you know, to assure me that you're
20 not going to pull the same thing you did four years
21 ago, I want it understood that we start the
22 facilitation at the mediation award."

23 Q Okay.

24 A And he said no.

25 Q So, let me just see if I can sum this up. So the --

again, to -- to sort of -- things a bit; not that you're not clear, but to brief here. What happened was in the earlier facilitation -- you went into a facilitation process and were ultimately told by the facilitator forget it, they're not going to pay a penny, at least not at this point, correct?

A That is correct.

Q You then went through a -- a long period of litigation, including appeals. You wrote a letter demanding -- this letter in February that everyone has in front of them, demanding \$4.3 million, and that was your demand; is that right?

A That is correct.

Q And speaking as a lawyer who has done some same kinds of work as you have, when I make a demand, and I assume this is true for you as well, I do not expect my demand to be met 100 percent. I expect my demand to be countered with -- with a lower offer, and I assume that was your expectation when you wrote this letter; am I right about that?

A I think that's -- that's fair to say, yes.

Q At any rate, then you have some success with the Supreme Court, and before you were going to another facilitation, you insisted that the City come into facilitation being prepared to pay at least \$2.3 --

1 \$2,350,000.00; am I right about that?

2 A Correct.

3 Q And that demand on your part was rejected by the
4 City?

5 A Yes.

6 Q So the case then went to trial?

7 A Yes. But first, I want to explain that in August, as
8 we're getting ready for trial, we had the meeting in
9 my office, and Mr. McCargo, and Ms. Osmauede, and Mr.
10 Copeland said -- you know, I told them, I said, "You
11 guys just don't realize how strong our case is. You
12 must have blinders on. I mean we have an excellent
13 case." And -- and I said, "It's really not going to
14 do the City of Detroit any good to try this case.
15 Why don't we try to settle?" And they said, "We will
16 try to settle it if you agree not to start at the
17 \$2.35 million -- if you will start at ground zero in
18 your negotiations -- the Mayor's out of town, but
19 he'll be back on Wednesday. I'll talk with him, and
20 I'll get to you on Thursday or Friday, and if he
21 agrees to that, we'll go forward." And I said to
22 them, "I will agree to start at ground zero, but I'll
23 tell you right now between us girls, so to speak, I
24 won't recommend less than the whistle -- less than
25 the mediation figure. But I'll start negotiating at

1 zero." He said okay. Never heard another word from
2 him. I mean he -- he promised me faithfully he would
3 call me back and let me know after he talked to the
4 Mayor, one way or the other; either yes we'll
5 negotiate or no, we will not negotiate, and he never
6 called back.

7 Q This was Mr. McCargo?

8 A Yes. And, you know, I've -- I've had that experience
9 before where an attorney will come up to you just
10 before trial and offer some hope of settlement, and I
11 -- I think part of it -- is maybe the other lawyer --
12 you know, if I thought there was a possibility of
13 settling the case at that late date, maybe I wouldn't
14 have worked as hard as -- as I would have otherwise,
15 and so I -- you know, some lawyers -- I'm not saying
16 Mr. McCargo did that, because I always found Mr.
17 McCargo to be a perfect gentleman, but -- but I've
18 had it happen to me in other cases, where they said
19 we'll call you on Friday, and they never called me.
20 And that's what happened here. So then we went to
21 trial and we tried the case.

22 Q And the case was tried, and again, this is an area of
23 some confusion, so if you can briefly clarify it. In
24 the course of that trial, a number of questions were
25 asked, both of the Mayor and of Ms. Beatty, his

1 former chief of staff; is that correct?

2 A Yes.

3 Q One of those questions was whether or not Deputy

4 Chief Brown had been fired rather than transferred or

5 some other employment action taken; is that right?

6 A That's correct.

7 Q And they both denied that he had been fired; am I

8 right about that?

9 A That's correct.

10 Q Another area of questioning for the two of them was

11 whether or not they had a romantic relationship, and

12 they both denied that they had a -- either a romantic

13 or a sexual relationship; is that correct, sir?

14 A That's correct.

15 Q And I'm trying to remember the third --

16 A How Nelthrope's name was leaked to the press.

17 Q Oh, right.

18 A I asked Beatty if she had anything to do with leaking

19 Nelthrope -- that confidential two-page memo, because

20 she's the only one that had it. The chief gave it to

21 her, and then all the sudden it's in the newspaper,

22 and she said that Bob Bird (ph) distributed to the

23 press, but it was without her cooperation or she sure

24 didn't intend that he distribute it to the press,

25 and, you know, I -- I -- in my opinion, that was

1 clearly perjury.

2 Q And Bob Bird was or a is public relations specialist;
3 he did work on behalf of the Mayor --

4 A That's correct.

5 Q Now, also in the course of the trial, you -- and
6 actually before the trial, you had made several
7 attempts to subpoena some text messages that had been
8 communicated between the Mayor and his chief of
9 staff; am I -- am I right about that?

10 A Yes.

11 Q And those subpoenas were directed at the SkyTel
12 Corporation or Company, am I right, located in the
13 city?

14 A That's correct.

15 Q And again, very briefly, could you outline for the
16 members of Council what those attempts were, and how
17 they -- what -- what the results of those attempts
18 were?

19 A In -- in late August of 2004, I subpoenaed SkyTel,
20 and the City came in -- I subpoenaed Christine
21 Beatty's SkyTel pager records for four months; two in
22 2002 and two months in 2003. The City came in with
23 an emergency motion to quash the subpoena before
24 Judge Jeff Callahan. We went to hearing; he denied
25 the motion. I re-subpoenaed the records. The City

1 came in with a second emergency motion, and in this
2 case, the judge said, "I'm not going to deny the
3 subpoena, but if you're worried about confidential
4 information being exposed, have the documents sent to
5 me." So I sent out a new subpoena telling SkyTel to
6 send the documents directly to the judge. And the
7 judge explained to me that what he would do is he'd
8 hold those records; when I called Christine Beatty
9 and the Mayor as witnesses during the trial, if they
10 testified to anything that was contradictory to the
11 text messages, he would then bring the text messages
12 out, and -- and prove that they had lied on the
13 witness stand. And I said if that's your way of
14 doing it, I respect that, fine. Well, unbeknownst to
15 me -- so I thought after the second motion to
16 suppress, I sent the second subpoena directing them
17 to go to the judge, and during the trial, I went
18 through a whole litany of questions designed to
19 conflict with the text messages, which I thought the
20 judge had.

21 Q And the litany that you went through revolved around
22 the three points that we just outlined for the
23 members of the --

24 A That's correct.

25 Q -- City Council.

1 A Brown -- Brown's termination, Nel -- the leaking of
2 Nelthrope's name, and a sexual or intimate
3 relationship between the Mayor and Beatty, and other
4 -- and when I was all done with Beatty, the judge's
5 clerk said the judge wants you to produce those text
6 messages now, because he'll let them in. And I said
7 I don't have them, you have them, and he -- he was
8 surprised to hear that I thought he had them, and
9 everybody was kind of -- at least everybody on the
10 plaintiffs' side was dumbfounded. We thought the
11 judge had the messages and the judge didn't have the
12 messages. The judge said re-subpoena them, and that
13 led into a whole series of events. We then contacted
14 SkyTel. SkyTel told us hey, we're under new
15 management now; you can't get those records anymore.
16 They're gone --

17 Q This was all during the trial?

18 A During the trial. And then the trial ended, and I
19 contacted -- I had my investigator locate the person
20 who used to work for SkyTel back in 2004 who told us
21 they had the text messages. We tracked him down. He
22 was no longer with SkyTel. He's with the United
23 States government somewhere. We tracked him down and
24 asked him whether -- why he didn't send the messages
25 to the judge like he was supposed to. He said, "A

1 lady from the City called me and told me not to send
2 the messages, because she was going to challenge the
3 subpoena, and I shouldn't send them until the judge
4 rules on it." And I asked him whether or not the
5 messages were still available; he said, "Yes, they
6 are. They just don't know -- the people there now
7 don't know how to get them." He told us -- he gave
8 us some instructions. We sent out another subpoena
9 to SkyTel with instructions and we got the text
10 messages.

11 Q And this last final subpoena was sent out during the
12 trial or after the trial?

13 A It was sent out after the trial.

14 Q Now, Mr. Stefani, I know there's a lot of interest on
15 the part of City Council --

16 COUNCIL PRESIDENT COCKREL: Mr.
17 Goodman, Council President Pro Tem wanted -- was it
18 Mr. Goodman you wanted to -- or Mr. Stefani?

19 COUNCIL PRESIDENT PRO TEM CONYERS:
20 Mr. Stefani. I want him to go back and repeat to me
21 again, because I wasn't quite understanding how you
22 got the text messages. You said you tracked some man
23 down and ordered something. Can he go back to that
24 part?

25 THE WITNESS: Yes. What we did --

1 towards the end of trial, the judge told us to re-
2 subpoena the records, and -- and when we re-
3 subpoenaed them, SkyTel said, "We're under a new
4 management"; there's been some sort of a change in
5 their organizational structure, and those messages
6 are no longer available. So I told my investigator
7 to locate the person who worked for SkyTel back in
8 2004, when we initially subpoenaed the records. That
9 individual is no longer working for SkyTel. But he
10 was the one who had been in 2004. So, we located
11 that man. As I said, he was no longer working for
12 SkyTel, but he was working for the United States
13 government, I believe, in some capacity. We asked --
14 we got a hold of him; we asked him why didn't you
15 send the records to the judge like you were supposed
16 to. And he said, "Because I got a call from a woman
17 from the City who said that she had filed a motion to
18 suppress the subpoena and that we shouldn't release
19 them until the judge ruled on it."

20 BY MR. GOODMAN:

21 Q Did he identify that woman?

22 A No.

23 Q And --

24 COUNCIL PRESIDENT COCKREL: Mr.

25 Goodman, I would like you to ask one last question of

1 Mr. Stefani and then I want to go to questions from
2 Council members, and then when we're done I want to
3 come back to you for closing questions, but --

4 MR. GOODMAN: Okay. I want -- I did
5 want -- there are -- there are -- if I may just for a
6 couple of -- this was preliminary, Mr. President; I
7 had planned on about two hours for Mr. Stefani, and
8 we're only at 45 minutes, and there were -- if I may
9 ask the patience of the Chair here, I would like a
10 few more minutes to get into some areas about
11 settlement, if I may.

12 COUNCIL PRESIDENT COCKREL: Well,
13 that's fine. That's fine. I just -- I just know a
14 number of my colleagues have questions and I have
15 some --

16 MR. GOODMAN: I'm sure they do, and I
17 -- I promise there will be plenty of times for
18 questioning --

19 COUNCIL PRESIDENT PRO TEM CONYERS:
20 Could we have --

21 THE WITNESS: Yeah. I haven't really
22 finished Ms. Conyers question. So when I talked to
23 the man, I said we're now being told it's reorganized
24 and they don't have those records, and he says that's
25 because the people there are new, they don't know

1 where they are, but here's what you have to do, and
2 he gave us the name of a SkyTel employee in a certain
3 division to subpoena. And that's what we did, and we
4 got the records.

5 BY MR. GOODMAN:

6 Q Now, I was -- and --

7 MR. GOODMAN: Does that answer your
8 question, President Pro Tem?

9 COUNCIL PRESIDENT PRO TEM CONYERS:

10 Yes.

11 BY MR. GOODMAN:

12 Q My question really was why after the trial was over
13 would you issue another new subpoena to get these
14 records, since the proceedings have concluded and
15 there was a favorable verdict on behalf of your
16 clients?

17 A Well, for one thing, there were going to be post-
18 trial motions. I mean and every -- every time --
19 almost every time a -- a plaintiff wins a case, the
20 defendant comes in and asks for a new trial; they ask
21 for a verdict notwithstanding -- or a judgment
22 notwithstanding the verdict; they ask for -- to
23 reduce the amount of the award to the plaintiff, so I
24 knew we had those three post-trial motions coming. I
25 had a motion coming for attorney's fees, because

1 under the Whistleblower Act, the plaintiff's attorney
2 is -- is allowed to get attorney's fees, unlike most
3 cases where you -- you don't -- you can't collect
4 attorney's fees in a case; the Whistleblower and
5 Civil Rights Act and certain laws allow the court to
6 award attorney's fees. So, for those reasons, I
7 needed those text messages to see if the Mayor
8 perjured himself on the witness stand.

9 Q Thank you. And I'm going to -- given the fact that
10 we're a little short on time, I'm going to -- as you
11 know -- since you know what they are, I'm going to
12 ask a few leading questions at this point. You
13 received the -- the text messages and then you read
14 them; is that right, sir?

15 A That's correct.

16 Q And you found that at least in three crucial areas,
17 those text messages directly contradicted -- at least
18 from your perception, directly contradicted testimony
19 of both the Mayor and of Ms. Beatty during the trial;
20 am I right about that?

21 A That's correct.

22 Q And those three areas again are one, that Deputy
23 Chief Brown was, in fact fired, and it was
24 acknowledged in these text messages, or at least you
25 believed it was acknowledged in the text messages,

1 right?

2 A Yes, but that -- that isn't -- you know, I know we're
3 in a hurry, but I want to be clear. That's the point
4 the media has made a lot of, that he -- the -- they
5 used the word fired in the text messages. I was more
6 concerned about the decision to fire him. Whether it
7 came -- the testimony from the Mayor and Beatty for
8 four years was they got an anonymous letter that said
9 Brown was conducting a secret investigation, and I
10 knew when that anonymous letter came, because it --
11 you know, Ms. Beatty had testified to it a number of
12 times. The text messages show that they had made up
13 their mind not only to fire Brown, but -- but to
14 replace the entire internal affairs division, the
15 management or the execs there, prior to that so-
16 called anonymous letter coming. So that was very
17 significant.

18 Q So, the significance then, in addition to the fact
19 that they did use the term that he was fired, the
20 significance for you was the chronology or timing of
21 the decision to -- to fire Deputy Chief Brown; am I
22 right about that?

23 A Yes, because it was -- it's clear perjury.

24 Q And then in addition, the -- the text messages
25 disclosed that the source of the leak of Officer

1 Nelthrope's name to the media and to the public was,
2 in fact, the -- the Mayor's office -- the Mayor and
3 his chief of staff; am I right about that as well?
4 A Yes, the -- although it was -- came through Bob Bird;
5 they were instrumental in getting Bob Bird to sing
6 it.
7 Q And when I say is this -- am I right about it -- I'm
8 simply saying this was your perception of what these
9 showed?
10 A Yes, correct.
11 Q And finally, as you read the text messages, it was
12 clear to you that there was both a romantic and
13 sexual relationship between these two individuals and
14 it was disclosed in these messages; am I right about
15 that?
16 A Absolutely.
17 Q All right. And once you received these, did you --
18 did you -- I believe you did prepare a supplemental
19 brief to your attorney's fees motion; am I right
20 about that?
21 A That's correct -- that is correct.
22 Q Now --
23 A And in the brief I cited some of the text messages.
24 Q Just so it's clear again to members of Council,
25 attorney's fees are allowed -- you -- you were

1 entitled to attorney's fees if you prevail in a
2 whistleblower case under the Michigan Whistleblower
3 Protection Act; am I right about that?

4 A That is correct.

5 Q And you had petitioned for these fees; is that right?

6 A That is correct. I had filed a motion for a million
7 dollars in attorney's fees.

8 Q And after you received these text messages, you
9 supplemented your papers petitioning for these fees
10 with a brief that outlined the three areas -- in
11 particular, the three areas that we have just talked
12 about here with regard to the substance of the text
13 messages; is that right?

14 A That is correct.

15 Q And as I understand it again -- and just so everyone
16 is familiar with this fact, you and I have talked to
17 one another, so I'm familiar with some of what you
18 have to say in advance, so that's how I am able ask
19 certain leading questions here; is that right, sir?

20 A That is correct.

21 Q All right. The -- your concern, as I understand it,
22 was that because judges are sometimes reluctant to
23 issue large awards of attorney's fees in cases like
24 this, and sometimes they suspect the lawyer who's
25 petitioning for the fees of having exaggerated the

1 fees, your -- these text messages would show or
2 indicate to the judge how much work it took for you
3 to prove these points and establish these points, and
4 in that sense corroborate and lend credibility to
5 your petition for attorney's fee; was that motivation
6 for the supplemental brief?

7 A Yes.

8 Q All right. Now, with all of that in mind, we get to
9 the date of October 17th, 2007, and on that date, you
10 went into a facilitation concerning these attorney's
11 fees; is that right, sir?

12 A Yes.

13 Q And just tell the members of the Council a little bit
14 again about the background of that proceeding and
15 where it happened and who was there.

16 A Well, Judge Callahan takes the position that he won't
17 -- he will not rule on attorney's fees in a
18 whistleblower case until the attorneys at least try
19 to agree upon a reasonable amount with a facilitator.
20 And I had just had a case before Judge Callahan with
21 Colbert-Osmauede on behalf of a Detroit police
22 officer, where we won a jury verdict, and he sent us
23 to facilitation. And in -- in the case of Brown and
24 Nelthrope, he did the same thing. He said -- he gave
25 us 30 days to arrange facilitation, and we arranged

1 it with a former Genesee County judge, and on the
2 17th we went in for that facilitation.

3 Q And who was the Genesee -- the former Genesee County
4 judge?

5 A Valdemar Washington.

6 Q And again, who was present in these -- in -- during
7 this proceeding?

8 A Initially, we started out with Mr. McCargo and Mr.
9 Copeland, and Valerie Osmauede, and there was a young
10 lawyer by the name of Sydney Turner, who worked for
11 Mr. McCargo, and another lawyer by the name of Akisha
12 Johnson, who worked for Mr. Copeland. In addition I
13 was there, and my law associate, Frank Rivers, was
14 also present.

15 Q And just briefly, can you sketch the back and forth
16 with negotiations around attorney's fees? I -- I'm --
17 - I believe you have some notes on this --

18 A Yes.

19 Q -- as well; is that right?

20 A Correct.

21 Q And I have copies of those notes, which I did not
22 obtain until yesterday, and so I would like to --

23 MR. GOODMAN: Do you have these? I'm
24 sorry, Mr. President; I just --

25 COUNCIL PRESIDENT COCKREL: No. Take

1 your time.

2 THE WITNESS: If you like, I could
3 start with some background --

4 MR. GOODMAN: Yeah, go ahead. Why
5 don't you do that while I'm looking. Thank you, Mr.
6 Stefani.

7 THE WITNESS: The facilitation started
8 about -- I believe 11:00 o'clock in the morning, and
9 it was at a neutral location, and Mr. Washington, the
10 facilitator, had the City attorney and Mr. McCargo
11 and Mr. Copeland and their associates sitting in an
12 auditorium, something like this. And he took Mr.
13 Frank -- I mean Frank Rivers and I, he took us to
14 another room, and he shuttled back and forth with
15 offers.

16 Now remember, this facilitation was
17 primarily and -- and -- started out being exclusively
18 to decide if we could agree upon attorney's fees, and
19 we were asking for a million dollars. Incidentally,
20 as a business lawyer, we keep -- we keep pretty good
21 track of our time, and -- and this isn't just a
22 number that sounds nice so we pulled it out. We
23 actually had time slips that justified something like
24 \$967,000.00 in time.

25 So, we started off negotiating, and

1 they offered me \$375,000.00. Then they upped it to
2 \$400,000.00. And I started off asking for -- I
3 reduced my \$960,000.00 to \$850,000.00, and then I
4 reduced it to \$820,000.00. And then the facilitator
5 came to say, "There's a number. I can't tell you
6 what it is, unless you're willing to accept it, but
7 they won't go below -- above that number" and he
8 hinted to me that the number was \$450,000.00 or
9 \$500,000.00 in attorney's fees. And I told him
10 because, you know, I am -- was anxious to resolve the
11 whole case, I said, "I'll tell you what; I think
12 that's too low, but I'll take the \$450,000.00 or
13 \$500,000.00, provided we settle the whole case today
14 and there's no appeal."

15 MR. GOODMAN: Now, let me -- we found
16 the document, so let me interrupt you for a moment.

17 BY MR. GOODMAN:

18 Q The documents that we just passed out are your
19 written notes of the proceedings; is that right, or -
20 -

21 A Well, it's the photocopies of what I gave you last
22 night.

23 Q That's right.

24 MR. GOODMAN: And I will -- I don't --
25 the jury doesn't -- I think it's not necessary for

1 the jury to read the -- all of them right now, but we
2 -- the jury, excuse me, members of Council -- too
3 long in a courtroom and not enough time in front of
4 the legislative body.

5 BY MR. GOODMAN:

6 Q Eventually, you had said you wanted a global
7 settlement of the whole case, and what -- and -- and
8 we have this facilitator, Judge Washington, shuttling
9 between their camp and their -- your camp, and he
10 came back and gave you their final response to that;
11 is that correct, Mr. Stefani?

12 A Yes. They --

13 Q And -- and what was that?

14 A He said they're not authorized to talk about settling
15 the whole case now, so they're not interested in
16 discussing that.

17 Q So that -- that -- in other words he said no, there
18 will be no discussion; is that right?

19 A Yes. He said they're not authorized to discuss this
20 global -- we used the word global settlement, because
21 as -- as I alluded to a few moments ago, a few months
22 before that, I had a similar case with Valerie
23 Osmauede for a Detroit police officer, and we came in
24 to agree on attorney's fees, and she offered me a
25 number, which was lower than I wanted, but I said I

1 will take your number if we agree to a global
2 settlement. That you won't appeal and I won't appeal
3 --

4 Q And that worked in that instance?

5 A And she called -- and she made a few phone calls. It
6 took about 15 minutes, but she got back to me and
7 said yes, I'm authorized to discuss settlement of the
8 whole case.

9 Q Well, when Judge Washington told you that they --
10 that they did not have authorization to talk about a
11 global settlement, did you say could they call to get
12 authorization or authority to do that; do you recall
13 anything like that?

14 A No. Well -- well, I didn't say that.

15 Q What did you do?

16 A Well, he was pretty clear -- I said, "Well then the
17 deal's over. I'm not taking this \$450,000.00 or
18 \$500,000.00, whatever it is that you haven't told me
19 is their top dollar, that you've hinted it's
20 \$450,000.00 or \$500,000.00." I said, "I'm not taking
21 that." And I -- and I -- and he says, "Well, then I
22 guess we're not going to get anyplace." And I said,
23 "Well, would you do me a favor? I have a
24 supplemental brief in my motion for attorney's fees,
25 and I'd like you to give it to Mr. McCargo, and ask

1 him to read it." And he said all right, and I said,
2 "Please don't look at it yourself, because I -- I
3 would just as soon you -- you're not seeing the
4 motion." And he said, "Fine, I don't want to see it
5 anyway" and he took it out and he gave it to Mr.
6 McCargo.

7 Q And why did you happen to have that supplemental
8 brief with you that day?

9 A Because I was going to file it when things were --
10 when we were done, I was going to file it with the
11 court of -- with the -- with the court.

12 Q But this -- this happened on -- what day of the week
13 was this?

14 A I believe -- I told you yesterday I thought it was a
15 Friday, but I -- I think it was a Wednesday. I -- I
16 know the date was Gary Brown's mother's funeral, and
17 I expected this facilitation to be over with quickly
18 so I could get to the funeral. So I believe it was a
19 Wednesday.

20 Q So, you -- this was the -- the draft of the brief you
21 had was ready to be filed?

22 A Oh, absolutely. Ready to go.

23 Q And -- and why did you tell Judge Washington not to
24 read it; it was going to be filed as a public record
25 very shortly anyway?

1 A Because if the City came back to me and said look,
2 don't file this, we'll settle the case, I didn't want
3 Washington to even know what it said. As -- as I
4 explained to you yesterday, it's not at all uncommon
5 for a lawyer to prepare, let's say a lawsuit, a
6 complaint, where you -- you're accusing somebody of
7 doing something wrong. It's not at all uncommon to
8 send them or their lawyer a copy of the complaint
9 first, and say look, I haven't filed this yet; if you
10 want to talk about settlement before it gets filed
11 and before it's a public record, give me a call.

12 Q So, it was your understanding that if this did result
13 in a resolution of the case, there would be a strong
14 interest on the part of -- at least of some of the
15 Defendants in maintaining the confidentiality or
16 secrecy of the material in it; am I right?

17 A Yes.

18 Q You then gave said pleading or this document to Judge
19 Washington, and what was the next thing -- what was
20 the next part of the experience, as you understood it
21 or saw it at that time?

22 A We waited for 45 minutes and didn't hear a thing, and
23 then Judge Washington came back in and he said Mr.
24 McCargo wants to see you in the parking lot. And I
25 walked out in the parking lot and Mr. McCargo looked

1 at me and he said, "Mike, I didn't know anything
2 about this." I don't know whether he was referring
3 to the fact that I had the text messages, or the fact
4 that the text messages showed quite clearly, in my
5 opinion, that the Mayor perjured himself.

6 Q Now, just so we're clear, all that you had shown to
7 Judge Washington, presumably all he gave to Mr.
8 McCargo was this -- this brief of yours, it was not
9 the actual text messages?

10 A No, it was our seven-page brief. But in the brief, I
11 had it organized into three -- it was a brief asking
12 -- just -- justifying the million dollars in
13 attorney's fees based on the extra work it -- it put
14 me -- it took us to disprove the Mayor's perjury that
15 went back three years, plus his more recent perjury
16 that just went back a couple of months in trial.

17 Q Now --

18 A At least areas --

19 Q -- Mr. -- Mr. Stefani, let me just say, and I -- I
20 will really appreciate it if you would cushion your
21 comments -- as well, as everyone in this room,
22 including you know, there are currently criminal
23 charges that include perjury filed against -- against
24 both Ms. Beatty and against Mayor Kilpatrick; you
25 understand that, right?

1 A Yes.

2 Q So -- and -- and everyone here -- I know I speak for
3 everyone in this room, and I hope for you as well,
4 hopes that the Mayor and Ms. Beatty get a fair and
5 just trial, and that means that part -- we have to be
6 very careful about how we characterize our views of
7 what he did, and so if you -- I understand that you
8 believe that this had been perjury, but I wish you
9 would -- when you -- future sake, the way I viewed
10 it, or in my -- in my opinion, rather than -- than --

11 A Right.

12 Q -- a bare allegation.

13 A And I will do that, and -- and I apologize if I gave
14 the impression. I'm just a lawyer. I work for Gary
15 Brown and Harry Nelthrope. I'm not a prosecutor.
16 I'm not an expert really on anything. But my view is
17 he perjured himself. I've been saying that. If you
18 go back and look at the old Free Press stories, I've
19 been saying that since his deposition in 2003.

20 Q But that's your opinion, and that's your opinion as a
21 lawyer --

22 A It's only my opinion as a private lawyer for Brown
23 and Nelthrope --

24 Q And -- and a lawyer -- impact this -- this --

25 A Yeah.

1 Q -- this effort --

2 A -- a lawyer who had -- served to get money if he

3 wanted it.

4 Q Thank you; that's very helpful. Now -- so you -- you

5 spoke to Mr. McCargo. McCargo said he didn't know.

6 Then where did the negotiations go? And this -- and

7 again, if you can just sketch it briefly.

8 A Yes. He -- he, you know, looked a little bit

9 chagrined, hangdog. Like I say, he said, "Did you --

10 did you file this with the court?" And I said, "No

11 I'm not -- but I -- I haven't -- but I'm going to

12 file it either tonight or first thing tomorrow

13 morning" -- because I had to go to this -- depending

14 on, you know, how soon we got out of there. And he

15 said, "Well listen, would you be willing to hold off

16 filing that and giving me a chance to make some phone

17 calls and see if we can talk about a global

18 resolution?" I said yes I would, and I went back;

19 maybe a half hour later, Val Washington came in, he

20 said -- he said, "Mr. McCargo said he caught the

21 Mayor in between flights at an airport and the Mayor

22 authorized us to go ahead with settlement discussions

23 of a global nature." He said, "Mr. Johnson, the head

24 of the Corporation Counsel's office, is on his way

25 down." And --

1 Q And where were you -- where was he going down to?

2 A We were at a private -- sort of like private mock

3 courtroom at one of the large law firms, I think it's

4 -- is it Charfoos?

5 Q Charfoos and Christensen?

6 A Yeah, right down by Wayne State. They had built this

7 -- converted an old house into a -- like a practice

8 courtroom, and we were in one of the jury rooms, and

9 the City attorneys and their associates were in the

10 main --

11 Q And some of this discussion occurred out in the

12 parking lot outside --

13 A The only discussion that occurred out in the parking

14 lot was with McCargo and I when he asked to see me in

15 the parking lot.

16 Q Now --

17 A I -- I shouldn't say -- the reason he was in the

18 parking lot -- I don't want to give the wrong

19 impression. I -- when I gave him this -- when I gave

20 Judge Washington this envelope, I said, "I -- I would

21 like you to give this to McCargo, and he may not want

22 to show it to the City attorney. So give it to him

23 in private." And I presume he went into the parking

24 lot to read it, rather than, you know, trying to keep

25 Valerie Colbert from seeing what it said, and that's

1 why he went out into the lot, because he did read the
2 whole thing in the lot.

3 Q Well, you believe that he read the whole -- the whole
4 thing in the lot --

5 A Yeah, because I believe -- either Washington told me
6 or I could see out a window, one of the two. I saw
7 him reading it in the lot.

8 Q How long was he --

9 A Forty-five minutes.

10 Q He had this document for 45 minutes before you went
11 and spoke to him?

12 A Approximately, yes.

13 Q Now, at this point then settlement negotiations
14 commence inside this mock courtroom or carriage
15 house, or however you described it; am I right about
16 that?

17 A Correct. Same thing though, shuttling; we never were
18 in one room.

19 Q And did you arrive at a particular figure for all of
20 these cases?

21 A Well, I -- I wanted -- I told them for a global
22 solution, I wanted to settle Harris/Brown/Nelthrope,
23 and there was a fourth case, a -- a Rufus Fluker (ph)
24 that I represented, and he's a -- it's not a
25 whistleblower, it's a very small minor case. He's a

1 -- a nice old gentleman who's being overcharged for -
2 -
3 Q Now, you're in front of City Council here, you
4 shouldn't really lobby --
5 A No, no, no. I'm just saying, I wanted to get it
6 wrapped in too, because I knew they wouldn't be nice
7 to me on this guy's case after Brown, and they said
8 no they couldn't discuss Rufus Fluker, because it
9 dealt with the water board. So to make a long story
10 short, we worked on a settlement for Brown,
11 Nelthrope, and Harris. Oh, the first thing I said is
12 -- that's what you may be referring to -- they said
13 well, what -- what are you asking for, and I said it
14 was, you know, like 8.2 for Brown and Nelthrope, I
15 believe, or 8.4, and I said I want four for Harris.
16 Well, they accepted Harris right away --
17 Q So there was no question -- Harris -- Harris was
18 snapped up --
19 A Yes, correct.
20 Q -- wanted -- that -- it appears to you the Defendants
21 wanted to settle and were anxious to settle and met
22 your demand immediately without negotiation, correct?
23 A That is correct.
24 Q \$400,000.00?
25 A That is correct.

1 Q And when you worked out the -- the balance of the
2 agreement on behalf of Brown and Nelthrope; is that
3 right, sir?

4 A Yes, that's correct.

5 Q For about \$8,000,000.00; is that correct?

6 A Essentially what I did is end up giving up the -- my
7 whole attorney's fee -- the -- the amount of the
8 interest -- the judgment was 6.5, the interest was
9 \$1,500,000.00 already, I believe. So when we went
10 into that hearing, that facilitation, we had solidly
11 under our belt \$7.9 million without an attorney fee.
12 And we ended up settling -- and I also had \$90,000.00
13 in expenses. So, we ended up settling the case for
14 \$8,000,000.00 for Brown and Nelthrope, and
15 \$400,000.00 for Harris --

16 Q And when you --

17 A -- so essentially I took nothing for attorney's fees.

18 Q And in your view, that \$8,000,000.00 was -- what
19 you're saying is it was short of the money you
20 believe you were owed; is that right?

21 A I -- well, it was short the money that I believed I
22 was entitled to under the rules. I didn't
23 necessarily -- I wasn't owed that until the judge
24 ruled on attorney's fees --

25 Q I apologize; you're right about that. But it was --

1 you felt that you were discounting the -- what you
2 believed to be the value of the case by some number;
3 is that right?

4 A That's correct.

5 Q How much do you believe you discounted it by?

6 A I believe I discounted it by \$1,000,000.00, the
7 amount of the attorney fee, because I -- as I said,
8 we had 7.9. I had about \$90,000.00 in expenses.
9 That brought it to \$8,000,000.00. Then I wanted
10 \$1,000,000.00 in attorney's fees on top of it, and
11 when we settled for eight even, I -- it was like I
12 gave up my attorney's fees in order -- now, just so
13 everybody understands, that doesn't mean I worked for
14 nothing; I'm not claiming that. It's -- if they gave
15 me another million in attorney's fees, it would just
16 be added to the eight we already had, and it would be
17 divided three ways. But you add the attorney's fees
18 to the whole recovery, and then you apply your
19 formula of a third, a third, a third.

20 Q Yes. Now, what -- how was this agreement basically
21 formulated? Did you -- were you taking notes, were
22 you writing down the terms of the agreement as -- as
23 they were worked out?

24 A Yes. I was drafting -- trying to formulate an
25 agreement to settle the case while I was waiting for

1 Washington to get back. Every time we'd make an
2 offer, there would be a half hour delay, and I
3 started drafting this document.

4 Q And that's the document that was just handed out to
5 members of Council, which I've entitled "Stefani
6 Handwritten Notes"; is that right, sir?

7 A Well, it -- it's the last two pages. I mean the --
8 the first two pages are notes, and the last five
9 pages are a draft of a document.

10 Q That document was eventually typed into a -- a typed
11 form, let's say; is that correct, sir?

12 A That's correct.

13 Q And that typed form is in front of you, I believe, in
14 this -- in this sort of bound volume, and I believe
15 that that is under tab three --

16 MR. GOODMAN: Members of Council,
17 under tab three.

18 BY MR. GOODMAN:

19 Q Is that correct, sir?

20 A Yes.

21 Q Called Settlement Agreement. Do you have that in
22 front of you?

23 A Yes, I do.

24 Q Okay. I want you to go to paragraph eight of that
25 Settlement Agreement.

1 A Yes.

2 Q Paragraph eight reads as follows. Well, let me back
3 up for just a moment; I'm -- I apologize. But there
4 are provisions in this Settlement Agreement that
5 provide for monetary payments, the numbers that we've
6 just been talking about, \$8,000,000.00; is that
7 correct, sir?

8 A That's correct.

9 Q And there are provisions in this agreement that
10 provide for confidentiality and the maintenance of
11 confidentiality of certain records. In particular,
12 the text messages and other fin -- and certain
13 financial transactions; is that right, sir?

14 A Yes.

15 Q On page -- going to paragraph eight again, the first
16 sentence reads as follows --

17 "As a condition precedent to this agreement
18 becoming operative, the monetary terms of the
19 settlement must be approved by Gary Brown, Harold
20 Nelthrope, Walter Harris, Mayor Kwame Kilpatrick,
21 and the City Council of the City of Detroit"
22 -- is that correct?

23 A Yes.

24 Q And you understood this, because you typed it, to
25 mean that only the monetary terms had to be approved

1 by these -- by these individuals within the periods
2 of time that are set out in the rest of paragraph
3 eight; am I right about that?

4 A You know, you're not -- I don't believe you're quite
5 right on that, in -- in the sense that when that
6 language, monetary terms, was agreed upon, I wasn't
7 thinking about it. It -- it -- in other words, my
8 draft of this agreement did not have the language
9 monetary terms. It simply said that the settlement
10 will be approved by the City Council --

11 Q Let's go now to the last page of your handwritten
12 notes, the Stefani Handwritten Notes, if we can, to
13 that paragraph eight.

14 A Yes.

15 Q And there we can see that you have originally
16 written, I believe, "As a condition precedent to this
17 agreement becoming operative, it must be approved by
18 Mayor Kwame Kilpatrick and the City Council of the
19 City of Detroit"; is that correct, sir?

20 A That is correct.

21 Q "It" has been crossed out and inserted above "it" is
22 the term quote, "The monetary terms of this
23 settlement" end quote; is that correct, sir?

24 A That's correct.

25 Q Whose handwriting is that?

1 A I'm not sure whether it's mine or Ms. Osmauede's.
2 What I did is show these notes to the -- you know,
3 after I had drafted this thing -- incidentally, we
4 had left Charfoos' mock courtroom, because Val
5 Washington had another appointment, and we went to my
6 office to finish the agreement, and when they got
7 there, I gave them this handwritten draft that I had
8 worked on, and I went out of the room and they read
9 it and made several changes, and that's what you can
10 see in the margins and other places, where they
11 suggested certain changes. I know that one of the
12 changes they wanted is instead of saying the entire
13 agreement would be approved by the Council and the
14 Mayor, they wanted it to say the monetary terms of
15 this settlement. Whether they wrote that in, or they
16 told me and I wrote it in, I'm not 100 percent
17 certain. My best recollection is either Valerie -- I
18 believe Valerie Colbert-Osmauede wrote -- wrote it
19 in, but in all honesty, you know, I'm saying that's
20 my best recollection if I had to, you know, make a
21 choice. But it very well could be me and she might
22 have said we've got to change this to this, and I
23 said go ahead, tell me what you want, and I wrote it
24 in.

25 Q At any rate, someone suggested that you cross the

1 word "it" out and insert instead the phrase "the
2 monetary terms of this settlement"; is that correct?

3 A That's correct.

4 Q That was not your idea --

5 A No, it wasn't. In fact, that's why I kind of
6 objected to your question -- I really didn't -- I
7 wasn't thinking about it. What the heck's the
8 difference between the monetary terms? I wasn't
9 thinking about it. But it's a change they wanted; I
10 didn't find it offensive, and I put it in.

11 Q Now, just briefly at this point, it's a lot to cover,
12 but what then happened was you -- you typed up the
13 draft that -- that we have in our book here, which is
14 under tab three, and it was signed by -- can you tell
15 us who signed it on behalf of Mayor Kwame Kilpatrick?

16 A Yes. You can see the signatures under Mayor Kwame
17 Kilpatrick is by Mr. McCargo and Valerie Colbert-
18 Osmauede. And for the City of Detroit, it's Valerie
19 Colbert-Osmauede and Mr. Wilson Copeland. And then
20 on behalf of Brown, Nelthrope, and Walter Harris, I
21 signed it, and under me is Frank Rivers.

22 Q Did you -- did you have any understanding as to how
23 this matter would then be brought -- the approval of
24 the settlement would be brought to the City Council;
25 did you know what the process was?

1 A I didn't. I -- I didn't know how they would do it.
2 I suspected that -- well, what I suspected isn't
3 important, but, you know, I assumed that they would
4 bring this whole thing to the City Council. But I
5 didn't -- that wasn't my responsibility, and I was
6 focusing on my clients, and I wasn't -- you know, it
7 wasn't up to me to decide -- especially since, when
8 you're working with the City, they make the City
9 Council seem sort of magical. When they don't want
10 to give you something, they say the City Council will
11 never approve it. Or if they do want to do
12 something, they'll say, yeah, we -- we've already got
13 the votes. You know, so you really don't --
14 Q Did -- did they tell you one way or another in this
15 case whether it would be easy, difficult, or probable
16 to get the settlement past the City Council; was
17 there any suggestion of that at all?
18 A I think there was some conversation that some of the
19 Council members were urging the Mayor to settle the
20 case, and they thought that they stood a fair chance
21 or a better than fair chance of having it approved.
22 But nobody said it was a lock; nobody said that this
23 is going to be a rubber stamp. They just said we
24 think -- we think the Council will approve it because
25 they want to get on with this and get it behind them.

1 Q Now -- and did you know that the very next day the
2 Corporation Counsel brought this matter over to the
3 Internal Operations Committee; this -- this body?
4 A No, I didn't.
5 Q Did you know that on October 23rd, a resolution which
6 was -- approved by Mr. Johnson, Corporation Counsel,
7 was submitted to the City Council to settle these
8 matters, both Brown and Nelthrope, and then a
9 separate resolution for Harris, and that those were
10 passed on October 23rd?
11 A Only what I read in the paper.
12 Q Okay. At some point --
13 MR. GOODMAN: And I refer the members
14 of the City Council to the item under tab five in the
15 bound book here --
16 BY MR. GOODMAN:
17 Q And I refer you as well, Mr. Stefani, there was
18 something called a Notice of Rejection of Proposed
19 Settlement Terms Arising Out of the October 17
20 Facilitation and signed by Mayor Kwame Kilpatrick.
21 Do you have that before you?
22 A Yes.
23 Q Have you ever seen that before?
24 A Yes.
25 Q What is your understanding of why that was filed, and

1 how it was filed?

2 A Well, I -- I met with Mr. McCargo and Ms. Osmauede
3 and Mr. Copeland sometime in, I guess it would have
4 been November, and we were talking about the
5 mechanics of closing, and it was sort of a pre-
6 closing meeting, and Mr. McCargo said to me
7 incidentally, you know, "We're -- we're not going to
8 go ahead with that October 17th settlement agreement,
9 we're going to do two new ones." And I -- I was very
10 surprised to hear that, and I said, you know, "You're
11 not going to do two new ones. That's the agreement
12 we've got and we're sticking to it." And he said,
13 "Oh, it'll be the same, we're just going to break it
14 down into two agreements."

15 Q This is Mr. McCargo telling --

16 A Yes. And I said why is that, and he said, "Well,
17 there's several reasons, but, you know, the -- do you
18 know that the Free Press filed a whistleblower or a -
19 - a Freedom of Information request?" And I said, "It
20 doesn't surprise me, but I -- I don't have knowledge
21 of it." And he says, "Yeah, and this is a way to
22 divide up the agreement so that when" -- here's what
23 he said. He said, "We're going to have the Mayor
24 reject the original agreement, so that when we answer
25 no such agreement exists, it'll be truthful, because

1 he rejected it. And then we're going to have these
2 two to replace it." And -- and he said that, and it
3 -- it -- you know, I don't want to give the
4 impression that there was anything secretive about
5 the way he said it or sub rosa, if you will. I mean
6 it was simply we got a problem, and that is the Free
7 Press is out there pestering us, and we think we can
8 avoid that problem by breaking it into two
9 agreements. So, it -- it appeared to me like it was
10 a couple of lawyers -- four lawyers discussing a
11 solution to a problem.

12 Q And the problem being that the -- if this -- that
13 otherwise, the original agreement, as you typed it up
14 in your office on the night of the 17th, would have
15 been -- the City would have been required to turn
16 this over to the Free Press and the other newspapers
17 under the Freedom of Information Act; that was the
18 problem, right, as you perceived it?

19 A I didn't -- as he explained it to me. I mean I -- I
20 don't deal with the Freedom of Information Act, and
21 when I drafted this agreement, I wasn't -- I didn't
22 realize it had to be subject to the Freedom of
23 Information Act. Maybe -- maybe I should have. But
24 I've had many cases against cities, townships,
25 municipalities, where we've had confidentiality

1 agreements put in them because the township, city,
2 county, does not want a guy sitting on the sidelines
3 who's thinking of bringing a lawsuit to see the
4 numbers they settled for. So they often have
5 confidentiality provisions in them. You know, nobody
6 ever asked me until recently, you know, whether that
7 confidentiality prevented them from telling the
8 Council about it. It's just the opposite. The
9 Council has to approve the agreement, so it wasn't a
10 case of keeping the township board, the county, board
11 of supervisors -- in these other deals I've had --
12 it's not a matter of keeping them confidential from
13 their legislative bodies. It's a matter of keeping
14 it confidential from people who do not have the right
15 to know.

16 Q You then understood -- the next tab, under tab six is
17 the Mayor's approval and -- of terms and conditions
18 of settlement as approved by City Council on October
19 23rd, 2007; is that correct?

20 A (No verbal response)

21 Q So, were you told this would also be filed at the
22 same time you were told that a rejection was filed?
23 Do you understand my question?

24 A Yes. We -- you know, McCargo simply said, "We're
25 going to have the Mayor reject the first one, and

1 he's going to take the second one." They didn't have
2 these documents in front of them. These documents
3 weren't at this meeting I'm talking about.

4 Q And just so it's clear, this -- this discussion --
5 this meeting that you're talking about, occurred I
6 believe you said in November?

7 A That's correct. And I didn't really see these
8 documents until I think December 5th. When we
9 actually closed, they gave these documents to me.

10 Q And what you were told was these documents would be
11 prepared?

12 A I wasn't even told they'd be prepared. They said
13 we're going to have the Mayor reject it. Well, I
14 guess implicitly I was told -- he said, "We're going
15 to have the Mayor reject the first one, and we're
16 going to do two new ones."

17 Q So, now under tab seven, we have a Settlement
18 Agreement and General Release; do you see that?

19 A Yes.

20 Q And that was signed by the various parties, including
21 yourself, on what date? I believe it states November
22 1st, 2007.

23 A Yeah, but it was signed December 5th.

24 Q By you?

25 A Yeah. This is the close -- this is what we all

1 signed at the closing, and if you look at the -- page
2 four, if I'm reading this correctly --

3 Q The notarization says --

4 A Yeah. And that's my -- the date of my recollection.
5 That was the last check we received. In other words,
6 we didn't settle the entire case and sign these
7 documents until we were paid. That was part of the
8 deal, and the City was paying us kind of in
9 installments, and the last one came on September 5th,
10 and that's when we signed up the papers.

11 Q Now, under exhibit nine, we have finally a
12 Confidentiality Agreement; do you see that?

13 A Yes.

14 Q And this is signed by you, correct?

15 A Yes.

16 Q Also dated -- I don't know when it's notarized, but
17 it's dated again November 1st. Do you know when it
18 was signed?

19 A It was December 5th also.

20 Q All right. And it's signed by the Mayor, except his
21 signature and signature line read not Mayor
22 Kilpatrick, but Kwame Kilpatrick, correct?

23 A That's correct. Now, I should point out that the
24 Mayor and Christine Beatty weren't at this closing.
25 This document came with their signatures already,

1 just as the previous document you showed me came with
2 Brown's signature already. In other words, I had
3 Brown sign the previous one, they had the Mayor and
4 Beatty sign this one, and they brought it to the
5 closing, and that's when -- December 5th we signed it
6 up.

7 Q Did you understand that in entering into this
8 Confidentiality Agreement, Mayor Kilpatrick was --
9 perceived himself to be acting privately, and not as
10 an official of the City of Detroit, based upon the
11 way he signed the contract agreement?

12 A No.

13 Q Did you understand that he obtained separate counsel
14 -- if you would just go on to the next two exhibits,
15 which would be under tab ten and tab eleven, and
16 these are Escrow Agreements; is that correct?

17 A Yes.

18 Q And can you describe the -- the origin or providence
19 of these two agreements?

20 A Well, the -- the -- the agreement we signed on
21 October 17th called for the text messages to be
22 placed -- to be turned over to the Mayor, the Mayor's
23 representative, something like that. Well, put in a
24 -- in a safety deposit box. I don't remember exactly
25 what it says. But the very next day, McCargo said,

1 "Well, can we make arrangements for you to turn over
2 the text messages?" And I said, "We need to have a
3 escrow agreement. I'm not just going to give you
4 these messages while your clients are deciding
5 whether or not they're going to approve the
6 settlement." And so then we drafted an escrow
7 agreement, and this is it.

8 Q And the Escrow Agreement provides -- and then there's
9 a Supplemental Escrow Agreement; do you see that --
10 is that right?

11 A Yeah, and that was because we -- it's -- it's really
12 not an issue here, but there was a question of
13 whether they could issue two keys to a safety deposit
14 box, and either key holder could get in without the
15 other, or it would take both key holders, and -- and
16 the -- that's why we amended it. When we -- we were
17 able to get a bank to agree that they would require
18 two key holders to open the box, they did this
19 Supplemental Escrow Agreement.

20 Q Go on to the next tab, which is tab twelve, and this
21 is Notice of Designation of Representative, and what
22 did you understand this document to be and what the
23 purpose of it was?

24 A Well, the -- the idea was that these text messages
25 were -- and -- were to be turned over to -- I had

1 first put McCargo, and he said, "Well, it may not be
2 me; you better put in there Mayor's representative."
3 So the original October 17th said Mayor's
4 representative, and subsequent -- you know, the --
5 the -- I believe the later one said Mayor's
6 representative too, and this was an official
7 notification to me that William Mitchell the Third
8 was designated as the Mayor's representative, and I
9 got this on December 5th, the day we closed the deal.

10 Q And did you understand that Mr. Mitchell was acting
11 privately for the Mayor and not publicly for the
12 Mayor as an official of the City of Detroit, or did
13 you have any understanding either way in that regard?

14 A I -- I -- I -- you know, I didn't make that
15 distinction. It -- it never came up. Nobody ever
16 talked about it. So I -- I certainly didn't
17 understand that all the sudden the Mayor was wearing
18 a different hat, if that's what you're suggesting.

19 Q Let me go back to the Confidentiality --
20 Confidentiality Agreement, which is tab nine, and in
21 paragraph -- on page five, paragraphs -- there's a
22 discussion of liquidated damages that your clients
23 and your law firm, in fact, and you, agree to pay
24 liquidated damages in -- in the event that this
25 confidential information were disclosed by -- as a

1 result of anything that any of you did; is that
2 correct, sir?

3 A That's correct.

4 Q And just quickly explain to the members of Council
5 why such a clause was in there.

6 A It was -- it had to be some meat be -- behind the
7 agreement. In other words, on our parts, I was
8 agreeing not to reveal these text messages to anyone
9 in the future, or to reveal any of the -- the terms
10 of this settlement, and to put some bite behind it,
11 they said if you break that agreement, you have to
12 pay back all the attorney's fees and expenses you've
13 earned. And --

14 Q And -- and it talks about \$3,000,000.00 for Brown,
15 \$2,000,000.00 for Nelthrope, \$400,000.00 for Harris,
16 and a figure in the vicinity of \$2,000,000.00 for you
17 and your law firm; is that correct, sir?

18 A That's correct.

19 Q Now these -- and for some reason -- and I wonder if
20 you have any explanation for this at all; if in fact
21 there were such liquidated damages, it was to be paid
22 to the City of Detroit. Did you understand what that
23 was all about, or why?

24 A Well, I -- I really didn't, except I -- I presumed
25 that the -- I wasn't sure whether the Mayor was going

1 to pay part of this judgment, because -- you know, we
2 had a joint and several obligation here, and I did
3 not know what the Council's position would be, so I
4 thought there was a possibility the Council might
5 say, "Mayor, you're going to pay half of this, or
6 you're going to pay some portion of it." And so I
7 didn't understand -- when they -- when they put pay -
8 - if we broke our agreement and we had to pay
9 liquidated damages, we had to pay them to the City of
10 Detroit not to the Mayor.

11 Q Given the fact that these damages were going to go to
12 the City of Detroit if, in fact, anything happened,
13 do you know whether or not this Confidentiality
14 Agreement was ever shown to members of Council and
15 approved by members of Council?

16 A You know, I know what I've read in the paper since
17 then --

18 Q No, not since then. At the time did you know?

19 A I thought it was approved by City Council, but I
20 didn't -- no one told me that. It just seemed to me
21 that that's the way things would be done.

22 Q Was there any provision as to what you were to do if
23 you were asked any questions about these text
24 messages or the Confidentiality Agreement; you
25 Michael Stefani, or your clients?

1 A Yeah. Well, first of all, I was told -- I mean part
2 of the deal was that I would say that we settled this
3 case -- we came to a mutual agreement and we settled
4 it by discounting our attorney's fees significantly
5 to avoid the risk of an appeal, and if the questions
6 -- I believe my recollection is that was if I just
7 got a question about the settlement at all. My -- my
8 standard response was to be this was a mutual
9 agreement to avoid future litigation, which was true.
10 It's absolutely true. They restricted me to that
11 though, and I don't blame them.

12 Q And it --

13 A And then --

14 Q Excuse me. It was only if you were asked. You were
15 not to say that unless you were asked --

16 A That's correct.

17 Q -- is that correct? Go ahead, sir.

18 A All right. Then I believe since -- believe it or
19 not, sir, I haven't read these things in several
20 months; I believe the provision says if I got a
21 specific inquiry as to the text messages, then I had
22 to notify Christine Beatty and the Mayor, and that
23 was changed to notify Mitchell. But that is if I got
24 a specific question. I think it was limited to the
25 text messages, not just about did you settle the

1 case.

2 Q And everything else was to be filtered through you;
3 in other words, if any of your clients received
4 inquiries, they were to refer the inquirer to you; is
5 that correct?

6 A That's correct.

7 Q And that was -- these are, as we've now gone through
8 them, the basic outlines of the agreements that you
9 entered into to settle these cases; am I right?

10 A That's correct.

11 Q I have only one other question, and then I will turn
12 it over to members of Council for questioning, and
13 that is this, and you and I spoke about it also
14 already. In your view, you're a member of the bar,
15 and an attorney, and a former law enforcement
16 officer; was your suggestion that Mr. McCargo read
17 the -- your brief and reconsider the possibility of
18 global settlement, could that be viewed as extortion?

19 A You know, abs -- absolutely people can view it anyway
20 they want, but it didn't constitute extortion; it
21 doesn't constitute the more commonly used term
22 blackmail. I've been involved in extortion cases,
23 both as an FBI agent, and certainly as a lawyer, many
24 times; not in the criminal defense, but in -- in a
25 business context, and the extortion law is -- is

1 fairly vague. There are a lot of unanswered
2 questions. But we frequently as lawyers -- we
3 frequently get a question from our business clients.
4 They'll say, "You know, Patricia the bookkeeper has
5 been with us for 20 years, but we found out she stole
6 \$10,000.00 from us. What should we do? We're going
7 to go the police." And I always caution my clients,
8 "Do not threaten criminal prosecution to get Patricia
9 to pay the money back, because you're getting close
10 to the extortion or blackmail edge." And even you,
11 Mr. -- you suggested yesterday that I was tougher on
12 my clients than the law had to be. So my point is,
13 it's not clear what becomes extortion, except I
14 didn't threaten the Mayor or Mr. -- Mr. McCargo with
15 filing these things unless they settled. That would
16 probably be wrong. What I said is, "I'm going to
17 file these tomorrow period, or later on today."
18 There wasn't "unless you pay us" attached to it. And
19 that's the -- that's the difference. Now, you know,
20 from a layman's -- you may say, "Well, hell, that's
21 the same thing." But it's not the same thing. You -
22 - you draw fine distinctions in the law, and I did
23 not tell them I wouldn't file this if they'd agree to
24 negotiate a global solution. I just said here's the
25 next step. And they reconsidered it. And they came

1 back and said, "Well, we've reconsidered -- we're
2 going to try to contact the Mayor" -- and that's why
3 I don't think it's extortion. That's why I'm
4 testifying voluntarily today. I did the -- I
5 represented Gary Brown, Harold Nelthrope, and Walter
6 Harris to the best of my ability, and I sincerely
7 believe that I did the right thing. And I think the
8 law -- I -- I'm familiar with the law in this area.
9 The -- in my opinion, there's -- you couldn't find a
10 case that would come close to charging a person with
11 extortion based on what I did.

12 MR. GOODMAN: That's all I have, Mr.
13 Stefani. I know that members of Council will want to
14 ask some questions, and I apologize to Members and
15 the Chair for having taken as long as we have, but
16 there was a lot to do.

17 COUNCIL PRESIDENT COCKREL: No
18 problem, and when we're done with questions from
19 Council members, I will come back to you in case you
20 have any closing questions --

21 MR. GOODMAN: Thank you.

22 COUNCIL PRESIDENT COCKREL: -- or
23 comments you would like to address to Mr. Stefani. I
24 have a list -- I have a list of Council members that
25 I referred to yesterday, and I know not all of you

1 were present for the meeting when we discussed this
2 in terms of ground rules, but the framework that was
3 discussed and agreed to was that each Council member
4 would initially ask two questions. Is everyone still
5 comfortable with that?

6 That being the case, that's how we'll
7 proceed, and I'll start -- questions. I will be
8 first, followed by President Pro Tem, Council Member
9 Cockrel, Council Member Watson, and Council Member
10 Tinsley-Talabi, Council Member Kenyatta, Jones, and
11 Collins.

12 I just have two quick questions for
13 you, Mr. Stefani. In your review, is it clear to you
14 at the end of this, and the primarily reason why the
15 City was motivated to settle it quickly, was the
16 revelation of the text messages and the brief that
17 you prepared which refers to them?

18 THE WITNESS: I'm sorry; I -- I was
19 distracted, but the answer is -- I'm not sure if the
20 answer is yes or no, but I do know that the primary
21 reason they settled it quickly was because of my
22 brief and the text message reference. So, I -- I
23 just didn't quite catch how you asked -- how you
24 asked the question, but that's what I -- you were
25 getting at, and that's my answer.

1 COUNCIL PRESIDENT COCKREL: That was
2 the substance of my question, and you have answered
3 it. Thank you.

4 THE WITNESS: Thank you, sir.

5 COUNCIL PRESIDENT COCKREL: The other
6 question I did have; you did mention and it's been
7 documented that when you presented the brief to Mr.
8 McCargo, that Mr. Johnson from the Law Department was
9 contacted. Did you ever have any direct
10 conversations with Mr. Johnson, or any representative
11 of the City of Detroit Law Department in the
12 development of that Confidentiality Agreement? Did
13 you have any direct conversations with Mr. Johnson or
14 anyone else in the Law Department?

15 THE WITNESS: I -- when Mr. Johnson
16 arrived at the -- at the settlement or the
17 facilitation, I met him, shook his hand, and he went
18 into his room and we went back into our room, and the
19 answer is no, I had no direct conversation with Mr.
20 Johnson about the Settlement Agreement or the
21 Confidentiality Agreement. However, I did have
22 conversations with Ms. Osmauede, of course, because
23 she came back to my law office and -- and she went
24 over this document, and we were give-and-taking, you
25 know, typical -- we -- it took us until about 8:15 or

1 8:30 to finalize our Settlement Agreement, and we
2 probably got to my office about 5:00 o'clock. So I
3 would say at least two hours, maybe three hours, we
4 went back and forth negotiating the terms of this
5 agreement.

6 COUNCIL PRESIDENT COCKREL: Thank you.
7 President Pro Tem?

8 COUNCIL PRESIDENT PRO TEM CONYERS:
9 Thank you, Mr. President.

10 Mr. Stefani, let me preface my
11 questions by making clear that my agenda and motives
12 here are to find out how the Detroit City Council and
13 the future councils can protect the people of Detroit
14 from losing money due to the behavior of city
15 officials.

16 Your clients, Brown, Harris, and
17 Nelthrope, were certainly entitled to the
18 compensation on the verdict that they received in the
19 whistleblower case. But a dollar-for-dollar deal
20 paid with the taxpayers' dollars of the people of
21 Detroit can hardly be called a settlement agreement.
22 And I say that to say was the deal cut only after you
23 showed the Mayor's lawyers the contents of -- of the
24 white envelope, and I believe that your behavior was
25 the equivalent of sticking a gun in the face of a

1 bank teller and telling -- sticking them up and
2 walking out with a bag of taxpayer money.

3 So, I believe that what happened was
4 not a settlement, it was a stick-up, and the loot was
5 the hard-earned money of the taxpayers' dollars of
6 the people of the city of Detroit handing over for
7 our representative of the Mayor office -- cover-up a
8 trial of text messages.

9 So, I ask you, Mr. Stefani, did you
10 view your conduct as being the norm in a settlement
11 process, and how often have you seen a dollar-for-
12 dollar deal in a settlement? You refer to the fact
13 that you gave them an envelope. I thought that I
14 understood that the judge said that he wanted the
15 text messages and no one could look at the text
16 messages. So I'm curious as to how you were able to
17 give them an envelope with some contents in it in
18 order to get the dollar-for-dollar amount that you
19 wanted when they didn't agree to them. Can you
20 answer that question?

21 MR. GOODMAN: Before the witness
22 answers, I'd like to say something, and this is -- I
23 know this isn't a trial --

24 COUNCIL PRESIDENT COCKREL: You need
25 to speak --

1 MR. GOODMAN: I'm sorry; I know this
2 isn't a trial, and I'm not -- I'm not -- I can't
3 really make objections. But this is -- I have asked,
4 and I have assured every witness who is appearing
5 here today, that they would be asked difficult
6 questions, but they would be treated respectfully and
7 courteously, and -- and I've also asked members of
8 Council to -- to formulate questions that are
9 questions rather than statements of opinion or
10 speeches, which they will be permitted -- will be in
11 order, I think, in the conclusion of the whole thing.

12 So, I would simply ask that in the
13 future, the questions be formulated more questions as
14 less as statements of opinion or statements about the
15 character of a particular witness, because I think
16 that these witnesses have been forthcoming in
17 appearing here.

18 I -- that Mr. Stefani wants to and
19 should answer the question. It's just the form -- an
20 objection really as to the form of President Pro
21 Tem's question, Mr. President.

22 COUNCIL PRESIDENT PRO TEM CONYERS: Um
23 --

24 COUNCIL PRESIDENT COCKREL: Back to
25 you, President Pro Tem.

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COUNCIL PRESIDENT PRO TEM CONYERS:

Thank you. And to Mr. Goodman, they were -- composed in the same as your questions were when you first started. So I would really appreciate if you can answer my question, Mr. Stefani. Did you believe the conduct was beyond the norm of the settlement process?

THE WITNESS: No, I didn't. This -- the numbers in this case are very large, but the -- the -- prior to this case, the largest whistleblower case I ever had was against a government official, and the jury returned a verdict of \$2.2 million. I urged the man and I urged the government to settle the case. They refused, and they ended up writing us a check for \$4,000,000.00 after appeal. So, we literally doubled our recovery in the appeal process. And I believe that we -- because interest runs on -- on this money since -- from the day you file the lawsuit, plus you're entitled to get attorney's fees for the appeal.

So, when you say was this unusual that I got a dollar-for-dollar recovery; no, I don't think so, because my close -- closest experience to this case would have been the one I just told you about, a \$2.2 million jury verdict, and the government wrote

1 us a check for \$4,000,000.00. Really several checks
2 for \$4,000,000.00.

3 Now, as to the second part of your
4 question, could you -- you could help me out?

5 COUNCIL PRESIDENT PRO TEM CONYERS:
6 Yes.

7 THE WITNESS: What was the second
8 part?

9 COUNCIL PRESIDENT PRO TEM CONYERS:
10 That was all the first question. I'll go to the
11 second -- second question, and so every Council
12 member can get in, and then I'll come back -- get
13 back on the list.

14 After a 10-day jury trial, do you feel
15 that based on the years of exp -- your years as an
16 experienced attorney, that you were -- that there
17 were any issues, which if appealed to the Michigan
18 Court of Appeals, would reverse -- would result in a
19 reversal of the jury decision, or reduction in the
20 amount of damages given by the plaintiffs -- to -- by
21 the jury?

22 THE WITNESS: Absolutely not. I sat
23 through that trial for three or three and a half
24 weeks, and Judge Callahan bent over backwards to be
25 fair to both sides. I was personally convinced that

1 an appeal would be frivolous, because keep in mind
2 the -- the -- the legal defenses, the theories, had
3 already been appealed. That's what took place in the
4 first four years of this case, when they appealed to
5 the Court of Appeals and the Supreme Court. I
6 honestly felt, and I'm telling you today, I honestly
7 felt that their chances of succeeding on appeal were
8 very low, if not non-existent.

9 COUNCIL PRESIDENT PRO TEM CONYERS: So
10 how often have you seen dollar-for-dollar
11 settlements?

12 THE WITNESS: Well, in my case --

13 COUNCIL PRESIDENT PRO TEM CONYERS:
14 (Inaudible) that was the first part of that --

15 COUNCIL PRESIDENT COCKREL: That was
16 the third -- that was a third question.

17 COUNCIL PRESIDENT PRO TEM CONYERS:
18 Actually, that was a part of the first question and
19 he said he didn't understand, so that's why I was
20 adding that, because of that, so he could finish the
21 first question.

22 THE WITNESS: What -- what -- what a
23 lot of people think about is -- when they talk about
24 an -- and I think Mr. Mayer Morganroth gave the
25 opinion, right after this trial; he went to the

1 papers and he said, "Yeah, well Stefani got this \$6.5
2 verdict, but he'll probably settle for
3 \$3,000,000.00." That's the kind of thinking that is
4 fairly common when you're talking about a personal
5 injury case, where the jury awards a family, you
6 know, \$25,000,000.00, because their son was killed in
7 an auto accident, or the blender blew up and -- and
8 made -- turned the guy into a paraplegic and the jury
9 gave him \$15,000,000.00. In those big judgment
10 cases, it is common to settle for a fraction of what
11 the jury would -- because the jury makes the award
12 very large in those cases.

13 In our case, we had -- we -- we
14 documented to the jury the losses that Brown and
15 Nelthrope suffered. We had an -- an economist come
16 in and -- Thompson -- and explain how they lost the
17 money we were asking for. So, I didn't see, you
18 know, this case settling for less than what they were
19 awarded. We wouldn't have -- you know, it's
20 speculation, but we wouldn't have done that. And
21 that's a little different than a -- a flamboyant
22 trial attorney who goes in and sues for
23 \$50,000,000.00; you know, he just pulls a number out
24 of a hat. We could document and had to prove to the
25 jury that these gentlemen were injured to the tune of

1 a couple million dollars each, and that's why the
2 flamboyant trial attorney who comes in with a
3 \$50,000,000.00 gets reversed by the Court of Appeals,
4 because they didn't have a basis for those large
5 verdicts, and we did.

6 COUNCIL PRESIDENT PRO TEM CONYERS:

7 Thank you, Mr. President. Can you put me back on the
8 list?

9 COUNCIL PRESIDENT COCKREL: I already
10 have.

11 COUNCIL PRESIDENT PRO TEM CONYERS:

12 Thank you.

13 COUNCIL PRESIDENT COCKREL: Council
14 Member Cockrel is next.

15 COUNCIL MEMBER COCKREL: Thank you,
16 Mr. President.

17 Mr. Stefani, I appreciate your
18 appearance here today. I'd like to turn your
19 attention to documents provided to this Council by
20 Mr. Goodman, blue cover, tab number four. It is
21 dated November 1, 2007. It is a letter from you to
22 Ms. Osmauede -- Colbert-Osmauede. I turn your
23 attention to page two. It says, "Stefani & Stefani
24 Professional Corporation, \$2,826,666.00." Could you
25 explain to this Council, if you were in facilitation

1 about \$1,000,000.00 approximately in fees, what is
2 the \$2.8 million that's referred to here?

3 THE WITNESS: Well, my arrangement
4 with Brown, Nelthrope, and Harris was a typical
5 contingent fee arrangement. By that is -- by that --
6 I'm sure you're all aware contingent fee means that
7 generally speaking, if the plaintiff recovers, the
8 attorney gets a third of the recovery, and the client
9 gets two-thirds. When I was asking for \$1,000,000.00
10 in attorney's fees under the whistleblower, I was
11 asking for the time that I had actually devoted to
12 the case on an hourly basis. If I had recovered --
13 if the judge had made an award of an attorney fee,
14 whether it be \$500.00 or \$1,000,000.00, it would have
15 been added to the total recovery, and then it would
16 have been split one-third, one-third, and one-third,
17 just the way this was split here.

18 And I point out to the Council that,
19 although this figure, \$2,800,000.00 seems very, very
20 large, you have to keep in mind that an attorney who
21 takes a whistleblower case has the -- the financial
22 responsibility of funding this case. In other words,
23 we had two and three lawyers working on it for four
24 years. Well, I'll guarantee Mr. Frank -- Frank
25 Rivers and Bernie Stefani my son, and some of the

1 other people that worked on it, they still got paid
2 during that time. So, I had to advance that money
3 out of the law firm, and so to some extent while this
4 number might seem large, that's the way contingencies
5 work. Some you win, some you lose. And if we lost
6 it, we would have been out. We'd get nothing, except
7 the expenses the client can pay -- by expenses I mean
8 where we've taken cash out of our pocket to pay a
9 process server or to pay a photocopy company.

10 COUNCIL MEMBER COCKREL: The bottom
11 line is you -- you took away from this case \$2.8
12 million and change?

13 THE WITNESS: That is correct,
14 although there are expenses in this --

15 COUNCIL MEMBER COCKREL: Understood.
16 You said it was \$90,000.00 in --

17 THE WITNESS: Yes, correct.

18 COUNCIL MEMBER COCKREL: -- expenses
19 that would -- that could be reimbursed from the --
20 from this entire settlement.

21 THE WITNESS: That's correct.

22 COUNCIL MEMBER COCKREL: Okay. Bottom
23 line, Mr. Stefani, you said in the questions by Mr.
24 Goodman that you had drawn conclusions here --
25 question of perjury had been committed by the Mayor

1 and Ms. Beatty, but given that it was -- been stated
2 here by you that -- perjury was committed, my
3 question is very simple. If you knew or believed in
4 your heart that perjury had been committed, why did
5 you choose to participate in a cover-up, as opposed
6 to taking this matter to justice?

7 THE WITNESS: That's a good question,
8 and the answer is my first duty is to Brown,
9 Nelthrope, and Harris. That's -- that's what a
10 lawyer's first duty is, to his clients, and to be
11 quite frank with you, in all honesty, I was telling
12 the press and the public that the Mayor perjured
13 himself since 2003. Nobody seemed to be listening to
14 me. And I know this judge was already -- Judge
15 Callahan, when he finished this trial, he transferred
16 into the criminal division of the circuit court, and
17 he was handling criminal cases, and I just felt that,
18 you know, my clients' interests would best be served
19 by settling the case and going on with their lives.

20 COUNCIL MEMBER COCKREL: The bottom
21 line here is that if you -- if your -- the first duty
22 to your clients includes, in terms of your ethical
23 standards as a member of the Michigan State Bar, is
24 covering up perjury in some cases --

25 THE WITNESS: Well, I -- you know,

1 that's -- that's a tough question, because, you know,
2 certainly if my clients had perjured themselves,
3 without any question, I would have had an obligation
4 to report it. But now you're asking me should I have
5 reported the Mayor's perjury, and the -- the honest
6 answer is you -- we've all seen the spin that's been
7 put on these perjury charges. You have to sit down
8 with the transcript from the trial and the text
9 messages and you have to compare them word-for-word,
10 and I didn't have a transcript from the trial. So
11 the bottom line was I believe he committed perjury, I
12 believed it for four years, but did I have a
13 sufficient basis to accuse him of perjury to the
14 Attorney Grievance Commission? I didn't think I did.

15 COUNCIL MEMBER COCKREL: Thank you.

16 COUNCIL PRESIDENT COCKREL: Council
17 Member Watson?

18 COUNCIL MEMBER WATSON: Thank you, Mr.
19 President. Thank you all for being here.

20 I'd like to know, attorney Stefani,
21 did you tell Brown and Nelthrope about every
22 (inaudible) of the confidential agreement as you were
23 working through the process in October and November
24 and then December, where they kept (inaudible)?

25 THE WITNESS: No, they weren't. They

1 -- Brown knew of the text messages. Nelthrope and
2 Harris didn't even know about them. And Brown had
3 been active in his case and helping me with research
4 and -- and interviews and things, and when I got
5 these text messages, and they're voluminous, and I
6 mean they're -- it took me, Brown, and a couple other
7 people working for me, probably ten days to decipher
8 them all, because you have to -- you get one -- here
9 and then you have to go back three pages to see what
10 that message is in response to. So, yes, Brown knew
11 about the text messages; Harris and Nelthrope did
12 not.

13 COUNCIL MEMBER WATSON: I'm interested
14 in the -- the conversation that occurred around those
15 persons who represented to you that the Settlement
16 Agreement was going to be somewhat of a slam dunk
17 with City Council. I need to know whether you can
18 remember the conversation?

19 THE WITNESS: Well, you know --

20 COUNCIL MEMBER WATSON: And who -- who
21 is it who talked to you?

22 THE WITNESS: I specifically said to
23 this board -- to this Council that nobody said it was
24 going to be a slam dunk. Nobody. I asked McCargo
25 and Osmauede whether or not they thought Council

1 would approve it, and they said we think we have a
2 good chance because there is this climate of wanting
3 to put this behind the Mayor, and we think we have a
4 good chance of having it approved, but nobody said it
5 was a slam dunk --

6 COUNCIL MEMBER WATSON: Who -- say
7 that?

8 THE WITNESS: They didn't -- they
9 didn't tell me who that -- who said that at all, but
10 I'm saying that the City frequently uses the Council
11 as an excuse when they're negotiating. If you want
12 something from them they'll said, "Oh, the Council
13 will never approve that." Or, if they're making you
14 an offer that they want you to take they'll say, "We
15 got the votes to get this through." But -- but I
16 don't pay any attention to that, because I don't know
17 if it's just, you know, kind of bragging on their
18 part or not. That's -- all I know is in this case
19 they said we think we've got a reasonably good chance
20 of getting it approved by Council, because we --
21 everybody wants to get it behind them, and --

22 COUNCIL MEMBER WATSON: They said
23 everybody wants to get it behind them?

24 THE WITNESS: There are Council
25 members that want to put this behind and go on with

1 the City, because it's just going to be more money --
2 you know, that -- like being -- what's that
3 expression, crying out -- about spilled milk. It
4 would have meant just the City being put through more
5 and more expense, and there were people that said
6 hey, let's -- they told me that there was a climate
7 in the City and on the Council that wanted to see
8 this matter resolved, and the City move forward.

9 COUNCIL MEMBER WATSON: Not this
10 Council member. Thank you.

11 COUNCIL PRESIDENT COCKREL: Thank you.
12 You are welcome. Council Member Tinsley-Talabi is
13 next, followed by Council Member Kenyatta.

14 COUNCIL MEMBER TINSLEY-TALABI: Thank
15 you, Mr. President.

16 I want to make sure (inaudible).

17 COUNCIL PRESIDENT COCKREL: Yes.

18 COUNCIL MEMBER TINSLEY-TALABI: Oh,
19 thank you very much.

20 Good morning.

21 COUNCIL PRESIDENT COCKREL: Maybe a
22 third, depending on how things go.

23 COUNCIL MEMBER TINSLEY-TALABI: Okay.
24 Good morning, sir.

25 THE WITNESS: Good morning.

1 COUNCIL MEMBER TINSLEY-TALABI: As I
2 understand it, towards the end of October 17th
3 facilitation, you -- you asked the facilitator to
4 give Mr. McCargo a copy of a supplemental motion
5 regarding your attorney fees. Can you tell us when
6 did your office prepare the supplemental motion for
7 attorney's fees?

8 THE WITNESS: Oh, we had -- we
9 prepared over a week pri -- it was prepared over
10 about a week prior to that facilitation. I don't
11 believe it was actually finalized until the day of
12 the facilitation. And by that I -- what I mean is
13 that -- this wasn't just a standard motion or, as my
14 clients like to say, a -- you know, just turn on your
15 -- turn on your word processor and print me out a
16 document. I had to -- I had to go over my notes sand
17 figure out what -- I didn't have the transcript, so I
18 didn't know what the Mayor had said. So I had to go
19 over the -- my notes of the questions I asked him. I
20 had to figure out what I asked him, and then I had to
21 go to the text messages and see how they conflicted
22 with the text messages. And so I drafted this memo -
23 - this supplemental brief in three sections. One
24 that the Mayor perjured himself in connection with --
25 the Mayor and Beatty perjured themselves in

1 connection with the circumstances of Brown's firing.
2 The second issue was perjured themselves in
3 connection with the circumstances of Nelthrope's
4 identity being leaked to the press. And the third
5 issue was the Mayor and Ms. Beatty's romantic or
6 sexual relationship. And so it took me a week to get
7 that done. And each day they'd work on it a little
8 bit, type it up. I'd take it back and I'd look for
9 different references. But I think I didn't have it
10 done -- either until the night before the
11 facilitation or the date of the facilitation.

12 COUNCIL MEMBER TINSLEY-TALABI: Thank
13 you. Can you tell me, at any time on or after
14 October 17th, did you or any of the attorneys for the
15 City discuss whether or not City Council should be
16 made aware of the confidential settlement agreement?

17 THE WITNESS: The answer is no. When
18 we -- when we drafted this thing, it specifically
19 called for the City Council to approve it. That's
20 the way I drafted it. They asked to change approve
21 "it" to approve the financial terms. That didn't
22 dawn on me that they were not planning on sharing the
23 -- and I'm telling you the truth; I didn't -- you
24 know, we're going back -- seven page document,
25 changing things here, change -- that did not register

1 with me, the significance of those words. I had no
2 idea if they didn't -- and to this day, I really
3 don't know -- if they didn't share the whole document
4 with the City Council, I didn't know it, and we
5 certainly had no discussion of it, other than the
6 City Council had -- I -- I wanted to give the City
7 Council something like ten days to approve it. Ms.
8 Osmauede said it would probably take us -- I mean
9 McCargo turned around and said, "Val, how long do you
10 think it's going to take to get this approval?" And
11 she said, "Well, the management on such-and-such a
12 time, but you don't know, you know, it -- we might
13 have to take a little longer. Better put in 45 or 30
14 days." So they changed that. And then they changed
15 the -- the bit about approving the -- the entire
16 agreement to just approving the monetary terms of
17 this agreement. That was all on October 17th, and
18 there was never a discussion of it after that at all.
19 Nobody ever said did the City Council see it, they
20 didn't see it; nothing like that happened.

21 COUNCIL MEMBER TINSLEY-TALABI: Thank
22 you. Put me on the list, sir.

23 COUNCIL PRESIDENT COCKREL: Back on
24 the list. Council Member Kenyatta?

25 COUNCIL MEMBER KENYATTA: Thank you,

1 Mr. Chair. Thank you for being here, Mr. Stefani,
2 and I assure you my only motive is to get to the
3 facts and the truth.

4 Following up on Member Talabi's last
5 question, the agreement -- Settlement Agreement that
6 you wrote was after, in fact, Mr. McCargo had
7 received the motion that you were going to file. It
8 is absolutely your testimony here that what you
9 included in there considered -- included the text
10 messages, what was to happen with those text
11 messages, and also you included in there that all of
12 this was to be approved by City Council; is that
13 correct?

14 THE WITNESS: That is correct, yes
15 sir.

16 COUNCIL MEMBER KENYATTA: I -- I do
17 want to be put back on the list, because it's very
18 hard to establish a train of thought with just two
19 questions.

20 It is also your -- your testimony that
21 at one point before you went to trial, there was some
22 discussion about settlement, and it was your
23 determination that if they were going to begin with a
24 \$4.5 million threshold, that you were ready and
25 willing to settle the whole thing at that point and

1 that was rejected; they -- it was indicated to you
2 that there was no authorization to accept that low
3 amount?

4 THE WITNESS: Well, back in 2007 -- in
5 January of 2007, that's when I offered to settle for
6 \$4,000,000.00, and that's the letter --

7 COUNCIL MEMBER KENYATTA: Right.

8 THE WITNESS: -- that I sent you --

9 COUNCIL MEMBER KENYATTA: Right, under
10 tab one; yes.

11 THE WITNESS: And then we won in the
12 Court of Appeals, and I told Mr. Witus that -- he
13 wanted to submit the thing to facilitation, and --
14 and the judge had made it real clear that as soon as
15 the Supreme Court decides the case, I'm going to try
16 this within 30 days. That's what he told everybody.
17 And so Witus said why don't we facilitate it; this is
18 around May or June of 2007, and I said I'll agree to
19 facilitate it, but I'm not going to agree even -- the
20 first thing out of his mouth was well, then we got to
21 adjourn the trial, because the trial's coming up too
22 quick. He wanted to adjourn it to the end of
23 November. I said I'll adjourn it until the end of
24 October, no later, but to assure me that you're
25 sincere, we have to agree to start the negotiations

1 at \$2,350,000.00, which was the mediators' award. He
2 said they won't agree to that. He got back and he
3 said no deal.

4 Then in August, as we're getting ready
5 to go to trial -- trial started in August. The week
6 before trial or two weeks before trial, we're in my
7 conference room with McCargo and Osmauede and Mr.
8 Copeland, and I'm urging them to settle. I'm saying
9 guys, you just don't realize how strong this case is.
10 I don't know where your head it. You remind me of
11 ostriches. You have your -- your head in the sand;
12 you're not seeing the facts. And I said it's not
13 good for the City; we all as lawyers -- as brothers
14 in the bar, we owe it to our clients to try to
15 settle. I made a real appeal. And they said, "Well,
16 if you'll agree to start from ground zero" -- in
17 other words our negotiations won't start at \$2.35
18 million, they'll start at zero. And I said yes, I'll
19 do that. And he said, "Well, in that case, the
20 Mayor's coming back from a trip. I'll talk to him
21 Wednesday and I'll get back to you on Friday to see
22 whether he's willing to discuss settlement" and they
23 never called me back.

24 MR. GOODMAN: And again, that was Mr.
25 McCargo -- just to clarify that point -- that said

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that?

THE WITNESS: Yes.

COUNCIL MEMBER KENYATTA: Thank you.
Mr. President, please put me back on the list.

COUNCIL PRESIDENT COCKREL: Council
Member Jones, followed by Council Member Collins.

COUNCIL MEMBER JONES: Thank you, Mr.
President. Thank you for being here, Mr. Stefani.

You indicated that from the onset, you
felt that you had such an excellent case. You also
indicated that you did not receive the text messages
until after the case was over. Can you tell me why,
in your mind, you felt you had such an excellent
case?

THE WITNESS: In all honesty, when I
took the Mayor's deposition in 2003 at the
Metropolitan Airport, I was asked by the press after
that what was the most significant thing in the
deposition, and my answer was that I cannot believe
how obviously the Mayor is lying, and that gave us a
great case, because the jury, when they feel that
somebody is lying, the jury doesn't like being lied
to, and the Mayor's insistence on lying and really
telling his attorneys what to do, blinded them from
the strengths of our case.

1 For example, I said the Mayor met a
2 Jamaican woman at -- in the back of a barber shop.
3 Now, Walter Harris, you have to -- you don't know the
4 man, but if he were here today, he's an extremely
5 credible guy. Family man, devoted father, and the
6 Mayor, to some extent, used him as a chick magnet,
7 because he's so big and so handsome, the Mayor wanted
8 Walter Harris around because he attracted young
9 women, and Harris wanted no part of it. Harris was
10 there when he met the Jamaican woman. So what does
11 the Mayor say? The Mayor says never happened.
12 Nelthrope was there during one of the times he met
13 the Jamaican -- well, actually two times at the
14 barber shop. He says nothing happened.

15 Those kind of lies are going to be
16 easy to prove to a jury, and that's why I felt we had
17 an excellent -- and there were other -- this
18 anonymous letter. Who gets an anonymous letter,
19 that's only, according to Beatty, four lines long,
20 that says Brown is conducting an unauthorized
21 investigation. Who then fires a police officer with
22 a blemish free career, 25 years experience, he's been
23 heralded by citizens left and right, he's been shot
24 in the line of duty; who fires that man based on an
25 anonymous letter, without checking personnel file,

1 and I -- and she testified, I never looked at the
2 personnel -- never talked to anybody about Ron's
3 background, never did this, never knew he was fired
4 in the line of duty, I just decided to fire him.
5 That, ladies and gentlemen, is so incredible that no
6 jury would believe it. And it turns out it's not
7 true, because as the text messages show, the -- they
8 had made this plan up long before she created the
9 text message. So that's why I felt we had a very
10 strong case.

11 And even after the trial -- you saw
12 the day of the trial, the Mayor gets up and says, you
13 know, I can't -- nothing was proven in this case.
14 Nothing was -- that's what his lawyers told the jury,
15 nothing was proven. Ma'am, they had their head in
16 the sand. This case was so solid that it took the
17 jury one hour to decide in their favor, and then
18 another hour to decide how much money they got. It
19 was a solid case.

20 We showed the Mayor saying -- during
21 the trial, he -- we -- it's very apparent that
22 Christine Beatty recommended Brown be fired. The
23 Mayor told the Attorney General, "She recommended it,
24 and I -- I -- although it was my decision ultimately,
25 I followed her recommendation." We showed in the

1 trial he's telling the media Beatty had nothing to do
2 -- absolutely nothing -- and -- and he does this in
3 front of the Manoogian Mansion on the radio -- on the
4 TV, and he did it time and time again, and we show
5 these news clips and he'd say -- he's say for
6 example, I didn't know my staff was being
7 investigated -- in other words, he didn't know Brown
8 was investigating Jones and Martin. He -- he puts
9 that on -- on a -- we played that for the court, and
10 he says well, I -- I didn't know that, you know, I
11 didn't know Jones and Martin were being -- well, that
12 is just so incredible that the jury didn't believe
13 it.

14 And I'd rather have -- you know, in
15 winning a case there can be nothing better than to
16 have a liar on the other side, that you can prove is
17 lying, because not only do you convince the jury
18 you're right, but you also convince the jury that
19 this guy is not a good guy. Be generous with your
20 verdict, because he's lying to you. And he did that
21 in court several times, and if any of you saw it --
22 one time he even -- his -- his lawyer asked him,
23 "What gives you" -- because the Charter does not give
24 the Mayor the authority to fire a deputy chief, and
25 all along we -- we'd say, you know, "Why did you fire

1 Mr. Brown?" and -- and they'd say the Charter says
2 the Mayor appoints and un-appoints. Well, it doesn't
3 say that. It says the chief appoints and un-
4 appoints. So, McCargo gets up, I believe, or maybe
5 Mr. Copeland, and they ask the Mayor right in front
6 of the jury, "What gives you the right to fire a
7 deputy chief?" And he said, "Well, there was a law
8 case when Mayor Gribbs or Coleman Young was mayor,
9 that this case gave the mayor the authority to revoke
10 the appointment of a deputy chief" and I had the case
11 there, and he was lying to the jury. It never
12 mentioned the mayor. The case stood for the
13 proposition that if the chief of police can appoint a
14 deputy chief, which the Charter says he can, then
15 implicit in that authority is for the chief of police
16 to revoke that appointment. That's what the case
17 said. Nothing about the Mayor. So I got up and I
18 asked him, "Mayor, you just said this case gave you
19 the authority to these -- these ladies and gentleman
20 of the jury. Now, show me in this case where it says
21 that" and he -- you know, did what politicians
22 frequently do, he shifted the subject. He says,
23 "Well, I -- I don't know about that case for sure,
24 but I know that it was policy or something" --

25 MR. GOODMAN: Keep in mind you're

1 talking to an audience of politicians.

2 COUNCIL MEMBER JONES: Thank you, Mr.
3 Stefani. In light of everything you just said, why
4 did you agree to start with a settlement of zero --
5 start at zero --

6 THE WITNESS: Just to get them
7 talking, because when I told them I would start at
8 ground zero, I also said, "But please under" -- you
9 know, I said this to them, "I will agree to start at
10 zero, but there is no way I'll recommend to my
11 clients that they accept anything less than the
12 mediation." But they don't have to follow my
13 recommendation. I mean I've had clients say, "Mike,
14 I'm anxious to get this over with, I'll take what
15 they're offering." So there was the possibility that
16 my clients could settle for less, but I wouldn't have
17 recommended it to them, and under those -- those --
18 that understanding, he was going to contact the Mayor
19 and call me back, and he didn't.

20 COUNCIL MEMBER JONES: Thank you --
21 thank you, Mr. Stefani.

22 COUNCIL PRESIDENT COCKREL: There's a
23 quick process question for Mr. Goodman from President
24 Pro Tem before we proceed in the order of speakers.

25 COUNCIL PRESIDENT PRO TEM CONYERS:

1 Seeing how there's a criminal investigation going on,
2 should we be asking questions as it relates to the
3 criminal investigation, or just sticking our
4 questions to what happened in the civil --

5 MR. GOODMAN: I think we should not be
6 asking questions as to the criminal investigation. I
7 -- I really do think to use now the -- we will be
8 crossing lanes.

9 COUNCIL PRESIDENT PRO TEM CONYERS:
10 Okay. Thank you.

11 COUNCIL PRESIDENT COCKREL: Council
12 Member Collins is next.

13 COUNCIL MEMBER COLLINS: Thank you,
14 Mr. President. This is not a question, but I'm
15 looking at the handwritten notes from Mr. Stefani,
16 and Mr. Goodman asked did he write the part that was
17 added on paragraph eight as to the condition
18 precedent to this agreement becoming operative, the
19 monetary terms of this settlement, and Mr. Stefani
20 said he didn't know who wrote it. I'm not an expert,
21 but it looks like he wrote it -- same writing as the
22 rest of the --

23 My -- I have a problem, Mr. Stefani,
24 when somebody asked you was it extortion to give him
25 the envelope and let them know that you had the text

1 messages, you said that it was not extortion because
2 you did not ask them to settle or else. Well, it
3 seems to me that you implied that. You don't have to
4 say -- you handled -- you handed over an envelope
5 with text messages that nobody else had that some
6 mysterious man got for you. Some mysterious man who
7 used to work for Sky Mark or whatever, who doesn't
8 work there now -- a lot of power or influence in --
9 in finding things, and -- and -- text messages came
10 to you, and not to the judge who requested them, and
11 then -- some woman calling from the City, who could
12 anybody whatsoever, and say don't send them to the
13 judge -- we may be filing another motion; all of that
14 just seems so fantastical to me that somebody would
15 take a phone call and act on it and not know who it
16 is, all they said is I'm from the City, and then not
17 do what a judge ordered them to do. The judge
18 ordered them to send those text messages to him. It
19 just seems fantastical to me. Does it to you?

20 THE WITNESS: No, because it's
21 happened to me a number of times with the City. When
22 I've subpoenaed records, they will frequently call
23 the person who has the records and they will say we
24 intend to file a motion to quash that subpoena, and
25 if you release those records, having -- us having put

1 you on notice that we're challenging the subpoena in
2 court, then you will be liable for any damage the
3 release of the records causes. It's happened before,
4 and, you know, I think if Ms. Osmauede were here, she
5 would -- she would admit that it happened.

6 COUNCIL MEMBER COLLINS: And -- and no
7 communication with the judge who issued the subpoena
8 --

9 THE WITNESS: Well --

10 COUNCIL MEMBER COLLINS: No
11 conversation?

12 THE WITNESS: No, they have to file
13 the motion -- you know, to do it truthfully, you
14 know, it -- if I get a -- if they find out that I've
15 subpoenaed bank records. Well, it takes time to
16 prepare a motion to quash the subpoena, to get it --
17 the judge to hear it, because judges don't let you
18 come in, just walk in. They might say all right,
19 come and see me next Wednesday. So in the meantime,
20 they call the bank and they say, "Look, we've got
21 this motion -- do not honor that subpoena because
22 we're challenging it and --

23 COUNCIL MEMBER COLLINS: Well, who
24 says that? The judge says that?

25 THE WITNESS: No, the -- the lawyer

1 for the City says that.

2 COUNCIL MEMBER COLLINS: But how do
3 you know who's on the phone?

4 THE WITNESS: Well, they would give
5 their name and they would -- identify themselves, and
6 they may even ask that it be put in writing. But in
7 the cases that I'm thinking of, they didn't ask that
8 it be put in writing; they just --

9 COUNCIL MEMBER COLLINS: In this case,
10 they didn't ask the names?

11 THE WITNESS: Well, I don't know in
12 this case. I was giving you an example of -- of the
13 Harris case. In -- in the preparation of the Harris
14 case, I subpoenaed bank records, and Ms. Osmauede or
15 somebody on her staff called the bank and said don't
16 send those out, we're challenging the -- the
17 subpoena, and in that case, they filed a motion and
18 challenged the subpoena.

19 COUNCIL MEMBER COLLINS: My second
20 question, Mr. President -- on the investigation or
21 inquiry -- going against the ethics and Canons of a
22 lawyer for this -- this action of giving the -- the
23 Mayor's people this envelope with the text messages?

24 MR. GOODMAN: -- before the witness
25 answers the questions, I would like to just make a --

1 at least a statement and instruct the witness -- the
2 -- the investigations of the -- of the Attorney
3 Grievance Commission of the State Bar of Michigan are
4 supposed to be confidential. Everybody in this room
5 knows that there have been -- that news has been
6 published about investigations, so that what was
7 supposed to be confidential apparently no longer is.
8 On the other hand, whether or not that has, in fact,
9 in this case, or whether or not it's just something
10 that's in the newspapers, I personally do not know.

11 I think that -- Mr. Stefani may feel
12 free to answer that question, and all of the other
13 witnesses may if they wish to, but I would just like
14 him to know that he -- given the fact that these are
15 supposed to be confidential investigations, that in
16 my opinion, he need not answer that -- that question,
17 with all due respect to Council Member Collins.

18 COUNCIL PRESIDENT COCKREL: --
19 clarification, Mr. Goodman. Mr. Stefani, would you
20 please respond?

21 THE WITNESS: Yes. The -- no one has
22 been -- no lawyer involved in this case has been
23 charged with any wrongdoing, but the State Bar is
24 investigating to see if anybody did violate the Code
25 of Professional Responsibility, and they've asked the

1 lawyers to submit answers to specific questions in
2 connection with their investigation, and I am one of
3 the lawyers they asked to answer questions.

4 COUNCIL MEMBER COLLINS: Thank you
5 very much for answering, because I don't know, and I
6 don't believe everything I read in the newspapers,
7 and even reading the newspapers everyday -- whether
8 someone was actively looking into this or not, and --
9 and that's why I asked him, because it seems to me
10 that somebody should have questions besides myself,
11 but I didn't know, and -- and that's why I asked. It
12 wasn't to pass aspersions on -- on Mr. Stefani, but I
13 just want to know what's going on in looking into his
14 actions. Thank you very much.

15 Would you put my name on the list? I
16 don't have any other questions, but just in case some
17 more come up.

18 COUNCIL PRESIDENT COCKREL:

19 (Inaudible)

20 MR. GOODMAN: I didn't mean to suggest
21 that the question was improper at all. I just wanted
22 the witness advised that since these are supposed to
23 be confidential, it was really his decision as to
24 whether he wanted to discuss it, and I appreciate him
25 being forthcoming as well.

1 COUNCIL MEMBER COLLINS: I understand.
2 Thank you.
3 COUNCIL PRESIDENT COCKREL: All right.
4 I have Council Member Reeves next, and then what I'd
5 like to do is get a sense -- I'd like to get a sense
6 from you and also from Mr. Goodman as to whether or
7 not we want -- consider taking a lunch break either
8 at noon or sometime shortly thereafter, or continue
9 with -- with questioning for maybe another 30 minutes
10 or so, but in the meantime, let's hear from --
11 pardon?
12 COUNCIL MEMBER COLLINS: And then end
13 for the day?
14 COUNCIL PRESIDENT COCKREL: No, we're
15 -- we still have at least two other witnesses for
16 questioning. So, let's expect a full day or full
17 afternoon. Yes. So, Council Member Reeves?
18 COUNCIL MEMBER REEVES: Thank you, Mr.
19 President. I'd like to commend corporate -- outside
20 counselor on his ability to stand with his fellow
21 lawyer and advise as to not characterize; however Mr.
22 Stefani has referred to our Mayor as a liar and these
23 things have yet to be proven, and I would ask that
24 some of that characterization could be confined --
25 he's not on trial; however, he is revealing

1 revelations that have yet to be proven.

2 MR. GOODMAN: I think that's very
3 fair, and I -- I am sure again that Mr. Stefani, when
4 he makes those statements, is expressing exclusively
5 his own opinion in that regard.

6 COUNCIL MEMBER REEVES: There was a
7 question in my mind prior to your -- your opening
8 statements as to where or how the text messages were
9 obtained; where are they now, and who has possession
10 of them?

11 MR. GOODMAN: That's for the witness.

12 THE WITNESS: The -- the -- the
13 agreement -- the October 17th agreement required me
14 to turn over the text messages to the Mayor's people
15 while the settlement was being approved, and we
16 agreed to put them in a safety deposit box, and
17 that's why we drew this Escrow Agreement, to just --
18 the Escrow Agreement just spelled out how long they
19 would be in the box, what they could be taken out
20 for, and we put them in the box. McCargo and I and I
21 believe Mr. Copeland and Osmauede. Maybe not Ms.
22 Osmauede; maybe it was just McCargo and I. But
23 anyway, we put them in the box, and when the -- on
24 December 5th, when we finally signed everything up
25 and got our last payment, we turned those over to Mr.

1 Mitchell, and he, to the best of my knowledge, we
2 turned over three CDs that contained three copies of
3 the text messages, as well as about 400 pages of
4 paper that was our working model. We'd underline
5 what we wanted and made notes in the side. We turned
6 that over, and to the best of my knowledge -- I -- I
7 know for a fact, Mr. Mitchell got them. What he did
8 with them, I don't know. And also my brief was in
9 that pile of documents, as well as some information
10 about Christine Beatty's -- the financing of
11 Christine Beatty's home and -- and those documents
12 were turned over to Mr. Mitchell.

13 COUNCIL MEMBER REEVES: Was it a
14 normal practice, Mr. -- Attorney Stefani, to ask
15 people who are no longer with the company to give you
16 -- information as to how to reach someone inside who
17 is still employed?

18 THE WITNESS: Oh, I -- I think so.
19 You see what -- maybe I didn't make that clear,
20 because I know --

21 COUNCIL MEMBER REEVES: You said he no
22 longer worked for them.

23 THE WITNESS: He didn't, and Ms. --
24 Ms. Collins -- Ms. Collins suggested that, you know,
25 he was a mysterious man. He was the man who was in

1 charge of these documents in 2004 when I subpoenaed
2 them the first time. He was the guy who had the
3 computer under his supervision, and in -- when --
4 when we were told they were no longer available
5 because of a reorganization, you know, I just
6 thought, well --

7 COUNCIL MEMBER REEVES: I don't know -

8 -

9 THE WITNESS: Oh --

10 COUNCIL MEMBER REEVES: -- that's why
11 I'm asking.

12 THE WITNESS: Oh, okay. We were told
13 that the documents were no longer available because
14 the company had merged or had come under different
15 management, or something like that. So, I asked my
16 investigator -- well, first I said, "Is this
17 gentlemen who we talked to in 2004, is he still
18 there?" And he said, "No, he's gone." And I said,
19 "Well, let's call him and find out if he knows
20 whether the records really are gone, or are they
21 stored in some computer," because, you know, he had
22 explained to us back in 2004, that all of these
23 things are stored on computers indefinitely, because
24 it's easier to leave them on a computer than it is to
25 take them off, so generally speaking, records that

1 would have normally been destroyed in 90 days or six
2 months, get left on computers, and he said -- so we
3 contacted him in 2007. He -- we said this person we
4 spoke to says they're no longer available because of
5 a reorganization, and he said, "Well, that person
6 just doesn't know, because they're new to that area"
7 he said, "But this person was there in" -- or he
8 said, "What you need to do is direct your subpoena to
9 this individual, make attention Mrs. So-and-so" -- or
10 something like that -- "because she knows where the
11 records are at."

12 COUNCIL MEMBER REEVES: One more
13 thing. We he a legal witness; was he called into the
14 trial -- was he ever --

15 THE WITNESS: No, no. He was never a
16 witness, because we never had the text messages
17 during the trial.

18 COUNCIL MEMBER REEVES: Okay, thank
19 you. Thank you, Mr. President.

20 COUNCIL PRESIDENT COCKREL: Mr.
21 Goodman, what's your recommendation? It's about --
22 shall we take a break for lunch and resume
23 questioning sometime between 1:00 and 1:30?

24 MR. GOODMAN: We have a -- we have a
25 witness who has been here since the beginning, Mr.

1 Copeland, and I would ask that we -- since he's been
2 very patient up till now, if I could just have a
3 minute to speak with him about the timing --

4 COUNCIL PRESIDENT COCKREL: Certainly.

5 MR. GOODMAN: Thank you.

6 COUNCIL PRESIDENT COCKREL: All right.
7 We'll take a five-minute recess while that's taking
8 place.

9 (WHEREUPON, a brief recess was taken
10 from 11:58 a.m. to 12:01 p.m.)

11 COUNCIL PRESIDENT COCKREL: Good
12 afternoon. At this point in time, Council is back in
13 session, and at this point in time, after conferring
14 with Mr. Goodman and our next witness, we are going
15 to take a lunch break. So this Committee of the
16 Whole will stand adjourned until 1:15 p.m.

17 (WHEREUPON, a brief recess was taken
18 from 12:02 p.m. to 1:18 p.m.)

19 COUNCIL PRESIDENT COCKREL: Good
20 afternoon.

21 MULTIPLE SPEAKERS: Good afternoon.

22 COUNCIL PRESIDENT COCKREL: I would
23 like to call the hearing back to order, and we're
24 going to proceed at this time with additional
25 questioning of Attorney Stefani.

1 I have maintained the list that we had
2 leftover from this morning. There are a number of
3 Council members on it. The person for additional
4 questioning of Mr. Stefani is myself.

5 So, Mr. Stefani, one question I do
6 have for you; now, kind of take you back on some of
7 the questions that were raised earlier about the
8 Confidentiality Agreement. You mentioned earlier, in
9 response to one of the questions from my colleagues,
10 is your first loyalty, your first order of business
11 was to look out for and protect the interests of your
12 client. My question is once you became aware of
13 these text messages, and what they suggested about
14 whether or not the Mayor and Ms. Beatty did or did
15 not perjure themselves on the stand, did you not seek
16 some way to both serve the interests of your clients
17 and the interests of justice? Did you consider that;
18 that there might be some way to do that? Mr.
19 Stefani?

20 THE WITNESS: Yeah -- no, I hear you,
21 sir. I'm just trying to formulate an answer, because
22 that's a -- that's a difficult question. When I --
23 when I got the text messages, I had several choices
24 to consider. I could have filed a motion for a new
25 trial, which would result in -- or at least a motion

1 for a -- a new trial with respect to the damages
2 portion, and that is actually go back in a public
3 forum, in the trial forum, and point out that --
4 these inconsistent statements. That was one -- and
5 that would -- in effect, that would serve both my
6 client and the public, because the public would know
7 through the trial, and it -- it would probably end up
8 in my clients receiving a larger monetary award.

9 I also considered -- I also considered
10 simply filing the text messages as part of my motion
11 for attorney's fees without asking for a new trial,
12 but simply asking that we be awarded the full amount
13 of our fees because of what I perceived to be the
14 perjury involved here. But this case, as is -- as
15 everybody knows, went on for a little over four
16 years, and in view of the text messages, is something
17 that should have not gone to trial at all. It should
18 have settled probably -- probably with my first phone
19 call to the Mayor before there was any lawsuit at
20 all, and I telephoned the Mayor to try to get Gary
21 Brown's job back. Had the truth been forthcoming at
22 that point, there would have been no trial, no
23 damages, but Brown would have been returned the
24 deputy chief.

25 But as I considered these various

1 options, I had to consider the negative side. If I
2 asked for a new trial and the public would learn of
3 the -- what I -- what I considered to be perjury,
4 there was a possibility that -- that Brown and
5 Nelthrope wouldn't do as well at the second trial.
6 So, having considered -- having thought of all the
7 different alternatives, I still came out on what was
8 in the best interests of my client, and that was to
9 leave it up to the Mayor and the City as to whether
10 they wanted to keep these things confidential, and --
11 and they opted obviously to keep them confidential,
12 and to resolve the case.

13 So, while I did think of these other
14 things, I do believe that it was in the best
15 interests of my client to use this information, as
16 I've done in many cases, where you send the opposing
17 counsel a copy of a brief that you intend to file
18 with various allegations in it, and let them
19 determine whether there's truth to those allegations,
20 and whether they want to settle the case to keep the
21 matters confidential or personal, or they do not
22 believe there's any truth to it, and they're willing
23 to litigate it in an open forum. And that's the way
24 I came out, and that's the way things developed.

25 COUNCIL PRESIDENT COCKREL: And a

1 follow-up question. In response to my previous
2 question, you mentioned one of the things that you
3 considered as to weigh what to do was the public
4 would learn of the alleged perjury. Why was that a
5 concern of yours?

6 THE WITNESS: Well, it really stems
7 from the respect I have -- I don't want to sound
8 corny, but I have respect for the legal process. I'm
9 -- I'm always telling clients, you know, our legal
10 process in this country, it's not perfect; convicted
11 people sometimes are -- or I should say guilty people
12 sometimes go free, innocent people are sometimes
13 prosecuted. But by and large, it's the best system
14 that I know of. And it depends on people telling the
15 truth. And any experienced lawyer knows that perjury
16 does take place probably in many more trials than we
17 know about, but when it comes from a -- a lawyer, it
18 comes from a -- an official, and it's so blatant that
19 if -- if that is overlooked and the people say oh
20 well, it's -- that's the way things happen, then I
21 think it really denigrates the system that I respect.
22 And I wanted to see that system preserved and
23 improved.

24 COUNCIL PRESIDENT COCKREL: All right.
25 President Pro Tem is next.

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COUNCIL PRESIDENT PRO TEM CONYERS:

Thank you. Mr. Stefani, you said just now with the President on his point that it was in your client's best interests to use this information -- that you received. So in essence, you were still kind of playing with -- doing a play on words or a play on documents as it relates to extortion.

THE WITNESS: Well, you know, as I said before, the -- the law is full of fine distinctions, as we all learned when we heard the President say he didn't have sex with that woman. And you can accomplish some things that if you do them correctly, it's perfectly legal. If you overstep bounds and you do it illegally, then you've got a problem. And yes, did I use these text message -- messages to convince the City that they shouldn't waste the taxpayers' money by appealing? Absolutely; I did that. But I did it in a way that I believed is perfectly legal. Now, the fact that it -- the outcome -- the outcome might have been the same if I did it illegally, but I didn't do it illegally. I believe I did it according to the law, and that is my duty as Brown and Nelthrope and Harris' lawyer, to make the best out of the evidence we have and to do it -- to do it in a legal proper way.

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COUNCIL PRESIDENT PRO TEM CONYERS:

And so basically you decided which way was legal and which wasn't legal?

THE WITNESS: Well --

COUNCIL PRESIDENT PRO TEM CONYERS: --

it wasn't about getting the -- it was -- if it was about saving the taxpayers' dollars, you wouldn't have offered this thing; you would have just taken it and the \$400,000.00. So it wasn't a matter of not wasting the City money, because you wanted to profit a little bit more with the residents of the Detroit City -- because you -- you used these text messages as leverage.

But what I'm still kind of curious on -- about is how you were able to locate a person who no longer worked for a company to give you documents that were -- that you subpoenaed in 2004, and to tell you a specific person to subpoena these documents, when in fact did you actually have these documents from the very beginning, and then you just needed another copy of the documents, or were you in fact the person who gave the documents to the Detroit Free Press, because at this point there's two documents out there? I'm just kind of curious about that. I think this City Council deserves to know what the

1 taxpayers spends its dollars on, and I don't think
2 that they were -- I think that in some instance that
3 you may -- that you were a part of the perjury,
4 because you kept alleging that there was per -- that
5 the Mayor was committing perjury, perjury, perjury,
6 and then now you said that you really didn't have any
7 evidence that he committed perjury. So could you
8 answer those questions for me, please?

9 THE WITNESS: Well, I certainly didn't
10 commit any perjury, and then -- I've been a lawyer
11 for, I don't know, 38 years, and FBI agent and a
12 police officer, and I have never committed perjury.
13 And I've had several judges, including the judges in
14 the 36th District Court, compliment me on my
15 forthright answers to questions, even when they might
16 have hurt our case. So, I haven't committed perjury.

17 As far as -- I used information I had
18 in a proper way to get a settlement for my client,
19 and -- and think about it, I didn't perjure myself.
20 I -- I had nothing to fear by this information coming
21 out. The -- the information -- let's -- let's not
22 lose --

23 COUNCIL PRESIDENT PRO TEM CONYERS:
24 (Inaudible) co-conspirator in the Mayor perjuring
25 himself?

1 COUNCIL PRESIDENT COCKREL: I'm sorry;
2 one second. Allow him to respond -- but first, Mr.
3 Goodman, what -- did you have a point of
4 clarification?

5 MR. GOODMAN: On -- only that I
6 believe the witness should be allowed to -- to
7 completely answer the question.

8 COUNCIL PRESIDENT COCKREL: Right.

9 COUNCIL PRESIDENT PRO TEM CONYERS:
10 Yeah.

11 COUNCIL PRESIDENT COCKREL: That's
12 what I was saying. Let's let him -- he can't respond
13 if he's cut off, so please finish, Mr. Stefani.

14 THE WITNESS: You know, I pointed out
15 what I believe was an indication of the Mayor's
16 perjury. I said I didn't go the bar association and
17 report him because I didn't have a copy of the
18 transcript. I was operating -- in other words, I got
19 these text messages that said A, B, and C. And I
20 said well, how did he testify in court; I had to go
21 by my memory and by my notes. And my notes indicated
22 that he testified X, Y, and Z. But that's not the
23 same as having the -- the transcript of his testimony
24 right before you, and I felt that going and accusing
25 the Mayor of perjury to the bar association was not

1 merited because I didn't have the proof. The people
2 who knew whether it was truthful or not were the
3 Mayor. And I could make an accusation to the Mayor,
4 and if he had nothing to hide, he would have -- he
5 would have said take off, but he -- we're not
6 settling this case because I don't care what you've
7 got, I told the truth.

8 So, it's different than making an
9 allegation to the bar association. They don't know
10 what's true or not, and I didn't have the evidence to
11 back it up at that point. I didn't have the
12 transcript. But by making it to McCargo and having
13 him convey it to the Mayor; they knew whether it was
14 true or not, and if it wasn't true, I'm sure they
15 would have told me to kiss off or get lost or
16 something like that.

17 COUNCIL PRESIDENT PRO TEM CONYERS:

18 Okay. The --

19 COUNCIL PRESIDENT COCKREL: That was
20 two questions. We have to move on now. Council
21 Member Cockrel?

22 COUNCIL MEMBER COCKREL: Thank you.
23 Mr. Stefani, good afternoon.

24 THE WITNESS: Good afternoon.

25 COUNCIL MEMBER COCKREL: I'm going to

1 go back to and get clarification -- once you
2 presented your envelope, your motion to Mr. McCargo,
3 at any point thereafter was there any negotiations
4 with Mr. -- Messers Copeland, McCargo, Ms. Colbert-
5 Osmauede on the \$7.9 million number?

6 THE WITNESS: The negotiation -- I
7 believe the answer is yes, because the negotiations
8 took place -- to my understanding, Mr. Johnson was in
9 the room, Mr. Copeland, Mr. McCargo, Ms. Osmauede,
10 and then they had two associate lawyers in the room.
11 We were in a different room. Val Washington went
12 back and forth, and there were continual
13 negotiations. They wanted this, I wanted that. They
14 --

15 COUNCIL MEMBER COCKREL: As to the
16 money or as to -- there was other matters? As to the
17 money?

18 THE WITNESS: As to the money and as
19 to the other matters also, yes. I mean they -- they
20 came back and they said we will have to be assured
21 that this information doesn't become public, and --

22 COUNCIL MEMBER COCKREL: No, I -- I
23 only care about the money.

24 THE WITNESS: Oh, the money.

25 COUNCIL MEMBER COCKREL: The \$7.9

1 million.

2 THE WITNESS: That's all I know is the
3 money discussion, Mr. Washington acted as an
4 intermediary. I presume all four of them, and by
5 that is McCargo, Osmauede, Johnson, and Copeland were
6 discussing the money. I had no idea of whether they
7 were discussing the text messages; in fact, I was led
8 to believe they weren't, because only Mr. McCargo
9 knew --

10 COUNCIL MEMBER COCKREL: Did they make
11 any counteroffers?

12 THE WITNESS: Oh, yes. Yes.

13 COUNCIL MEMBER COCKREL: On the money?

14 THE WITNESS: Yes, ma'am.

15 COUNCIL MEMBER COCKREL: What were the
16 counteroffers?

17 THE WITNESS: They made a number
18 offers that -- well, first of all, as to Harris, that
19 was done immediately. You know, one of the first
20 things out of -- out of the way was Harris. They'll
21 pay \$400 -- I asked for \$400 for Harris; they agreed
22 to pay \$400 for Harris.

23 COUNCIL MEMBER COCKREL: On the nose?

24 THE WITNESS: Then we went -- yes, on
25 the nose, because I probably gave them an offer they

1 couldn't refuse. Then they went to Brown and
2 Nelthrope and the -- they started around seven and a
3 half; I started probably at nine, and it went back
4 and forth, back and forth, for probably an hour and a
5 half, then finally Washington said to us, "They tell
6 us that there's no way they can do \$8,000,000.00. It
7 -- the Council won't approve it, nobody will approve
8 \$8,000,000.00. You got to come down below that."
9 And at that point, we told Mr. Washington that that
10 was our bottom line. That we already had \$7.9
11 assured us and we weren't coming down; we wouldn't go
12 below \$8,000,000.00.

13 COUNCIL MEMBER COCKREL: All right.
14 Mr. Stefani, quickly, page 128 of your deposition --

15 COUNCIL PRESIDENT COCKREL: Council
16 Member Cockrel, I think that was two questions.

17 COUNCIL MEMBER COCKREL: (Inaudible) I
18 mean I think we ought to try to do it -- I'm coming
19 back to that.

20 COUNCIL PRESIDENT COCKREL: I raised
21 the question earlier about whether or not two was
22 enough; no one had any objections. I'm perfectly
23 willing to expand that number.

24 COUNCIL MEMBER COCKREL: I just want
25 to get to an answer. This is basically following up

1 on one question. Mr. Stefani testified that we
2 didn't even negotiate that (inaudible) on the \$7.9
3 number.

4 MR. GOODMAN: Do you want a copy of
5 your deposition?

6 THE WITNESS: I got -- I got the
7 deposition. I just need to look at it for a second,
8 if you'll bear with me.

9 COUNCIL PRESIDENT COCKREL: What page
10 is that?

11 COUNCIL MEMBER COCKREL: Page 128 of
12 the Stefani deposition (inaudible) it was taken on --
13 January 30th.

14 COUNCIL PRESIDENT PRO TEM CONYERS:
15 I'm going recommend that we have three questions that
16 we're going to stick to that position for everybody,
17 not --

18 COUNCIL PRESIDENT COCKREL: I -- I
19 said we should have four.

20 COUNCIL MEMBER COCKREL: I suggested
21 we do periods of ten minutes, so we can get back and
22 forth on an issue and get it --

23 COUNCIL PRESIDENT COCKREL: Well, the
24 two questions was based on a recommendation from Mr.
25 Goodman, and once again when we discussed it

1 yesterday, no one had any objections.

2 COUNCIL MEMBER COCKREL: I thought he
3 said it was two questions on two different areas, and
4 you could follow-up on one question until you get to
5 an answer.

6 THE WITNESS: I -- I can answer the
7 question. If I understand it correctly, the
8 deposition said that we were entitled to \$7.9 million
9 with the jury award of \$6.5, I think, and then
10 interest of \$1.4, and I said there was no
11 negotiation. Everybody agreed to \$7.9. What I mean
12 was that nobody -- nobody quarreled or disagreed with
13 the fact that under the law at that point, we were
14 entitled to \$7.9 million. I didn't mean to imply
15 that they didn't try to get me to agree to a lower
16 amount. They did. But nobody disagreed that as of
17 today under the law we were entitled to \$7.9. There
18 was no negotiation involved in that. We had a -- a
19 verdict and you count the -- the interest from the
20 time the case was filed, which was in 2003; you
21 compound the interest every 12 months, and it came to
22 \$7.9, and nobody disagreed with that.

23 But they didn't agree to pay \$7.9
24 right off the bat. They were down to I -- I believe
25 they came in around -- I don't remember exactly, but

1 I think it was \$7.3 or something like that, to settle
2 the whole case, and we were at \$8.8 or nine, and we
3 eventually got close to the \$8,000,000.00 mark, and
4 they said they couldn't take \$8,000,000.00, nobody
5 would buy \$8,000,000.00, and I told Val that's the
6 bottom line for us; we're not going to go below
7 \$8,000,000.00. He went out; he told them that. He
8 came back in 30 seconds and said okay, they will
9 agree to \$8,000,000.00, and then we talked about the
10 other aspects of the settlement.

11 COUNCIL MEMBER COCKREL: And so at the
12 end of the day, based on what you're --

13 COUNCIL PRESIDENT COCKREL: Okay.
14 Council --

15 COUNCIL MEMBER COCKREL: -- what it
16 says here --

17 COUNCIL PRESIDENT COCKREL: Council
18 Member, that --

19 COUNCIL MEMBER COCKREL: -- it was
20 what you -- it's what --

21 COUNCIL PRESIDENT COCKREL: Council
22 Member Cockrel -- Council Member Cockrel, you're --
23 you're past two at this point.

24 We've got two recommendations on the
25 floor. I mean two questions is -- clearly I think is

1 proving to be limiting. We've had some Council
2 members express that. I recommend we go to four.
3 There's another suggestion which is that we allow ten
4 minutes on an initial round of questions for each;
5 that will drag the day out, but I mean I think we
6 should take as long as it takes.

7 MR. GOODMAN: The only -- and -- and I
8 have no -- I understand this need, and I -- my only
9 concern is that we have two more witnesses this
10 afternoon; one of whom has been waiting here since
11 9:00 o'clock this morning, and the other whom will
12 not be able to be here after today. And I just want
13 to make sure that we can accommodate both of those
14 witnesses this afternoon, and I will take much less
15 time in my direct examination of each of them, given
16 the -- the obvious need of Council members to ask
17 more -- do more intensive questioning. So with that
18 said, I just want everyone to be conscious of that
19 fact.

20 COUNCIL PRESIDENT COCKREL: You have
21 to ask him.

22 COUNCIL PRESIDENT PRO TEM CONYERS:
23 Could we -- if we needed Mr. Stefani to come back
24 another day, could he come back another day?

25 MR. GOODMAN: Let me talk with him;

1 just a moment.

2 President Pro Tem, Mr. President, and
3 members, I believe that we -- what we could do at
4 this point is that if people have burning questions
5 that they feel need to be asked now, they should go
6 ahead and ask the witness those questions, and then
7 we should move on to the other witnesses and the rest
8 of the hearing. If at the end of all of that people
9 still want to ask other questions of Mr. Stefani, he
10 has very graciously agreed to accommodate us and come
11 back another time.

12 COUNCIL PRESIDENT PRO TEM CONYERS:
13 (Inaudible) nature of the other two witness as we
14 start with the other two -- because the last
15 witnesses we won't be able to -- I'm sorry; I -- I'm
16 making a motion that we allow Mr. Stefani to come
17 back -- one of the witnesses that's here today won't
18 be able to come back any other time, so that way we
19 can get to her and ask questions, when he said he
20 could come back another day.

21 COUNCIL MEMBER WATSON: (Inaudible)

22 COUNCIL PRESIDENT COCKREL: Yes --
23 yes.

24 COUNCIL PRESIDENT PRO TEM CONYERS: --
25 after he finishes this round.

1 COUNCIL PRESIDENT COCKREL: I mean I
2 think what we need to do is finish with -- finish
3 with the questions that we do have, and if there are
4 any Council members that still -- that they have a
5 question that is not a burning question, then they
6 can just let me know -- not ask it, but in the
7 meantime, I do have a list of other Council members,
8 and I think we need to proceed with them.

9 First, it's my recommendation -- I
10 think we do need to try to conclude these hearings
11 this week. I would rather not have a fourth day, so
12 we have to keep in mind that we -- we have our budget
13 -- the Mayor's budget address coming up on Monday,
14 after which we'll be taking that recess period, so
15 that the fiscal analysis can evaluate the budget and
16 report back to us, and then we can prepare for our
17 budget hearings the following week.

18 So, I say that to say that we got a
19 busy schedule coming up, and I think we're gonna be
20 best served if we try to conclude this process this
21 week, and not do a fourth day unless it's absolutely,
22 absolutely necessary.

23 So, I think in the meantime we should
24 move on with the questions, and again the question is
25 still on the table though do we stick with the limit

1 of two, or do we expand?

2 COUNCIL PRESIDENT PRO TEM CONYERS:

3 Two.

4 COUNCIL MEMBER COLLINS: Mr.

5 President?

6 COUNCIL PRESIDENT COCKREL: Yes,

7 Council Member Collins?

8 COUNCIL MEMBER COLLINS: I would -- I

9 think it would be better if you expand it, because

10 two questions are too limiting. Not for me, but I'm

11 listening to other people, and the answer sometimes

12 leads to another question. So I think -- of four

13 questions -- you know, might be good, but I -- keep

14 the questions short if they can.

15 COUNCIL PRESIDENT COCKREL: Is

16 everyone comfortable with four -- going to four?

17 COUNCIL PRESIDENT PRO TEM CONYERS:

18 Are we going to take a vote?

19 COUNCIL PRESIDENT COCKREL: I don't

20 think it needs a vote if there's consensus, and I

21 don't hear anybody objecting.

22 COUNCIL PRESIDENT PRO TEM CONYERS:

23 I'm objecting.

24 COUNCIL MEMBER JONES: Me too.

25 COUNCIL PRESIDENT PRO TEM CONYERS: --

1 leave it at two, because we have all these other
2 witnesses and --

3 COUNCIL MEMBER COLLINS: Mr.
4 President, I move that we limit our questions to four
5 --

6 COUNCIL PRESIDENT COCKREL: Four?
7 All right. All in favor?

8 MULTIPLE SPEAKERS: Aye.

9 COUNCIL PRESIDENT COCKREL: Opposed?

10 COUNCIL PRESIDENT PRO TEM CONYERS:
11 Opposed.

12 COUNCIL PRESIDENT COCKREL: Ayes have
13 it. So we're going to four, and we're going to move
14 on. Council Member Watson is next.

15 COUNCIL MEMBER WATSON: Thank you, Mr.
16 President.

17 Mr. Stefani, how did you know about
18 the existence of the text messages through SkyTel in
19 the first place enough to subpoena them?

20 THE WITNESS: Well, I -- to tell you
21 the truth, I did not -- I'm not a technically hip
22 guy, so to speak. I didn't know that when you
23 subpoena text messages that you would get a verbatim
24 record of what was said. I thought you -- it would --
25 -- from my days at the FBI when you subpoenaed

1 telephone records, you found out that the person with
2 this telephone called that person at a certain time,
3 and that's what I thought the text messages would
4 show. I didn't know --

5 COUNCIL MEMBER WATSON: Okay. My --
6 my question was how did you know about the existence
7 -- text messages enough to subpoena them in the first
8 place --

9 THE WITNESS: Yes. And the answer is
10 there was -- people knew that -- I think Brown told
11 me that text messaging -- messages -- messaging was
12 used quite frequently in the police department, and
13 that the Mayor and the Mayor's staff had text message
14 machines. So I -- I had information -- I had
15 information that they were using text messages --
16 messaging machines, and that's why I subpoenaed the
17 records. I also subpoenaed things like e-mails,
18 letters, notes, and, of course, we didn't get any of
19 that.

20 COUNCIL MEMBER WATSON: Thank you.
21 So, your first notification came from your
22 representations from Mr. Brown?

23 THE WITNESS: Well, he's the one who
24 told me that Jerry Oliver was big on text messaging,
25 and he said the Mayor also has text messaging. Yes,

1 so the fact that they were using text messaging
2 machines to communicate came from Brown, and during
3 the course of questioning in depositions, I would
4 ask, you know, did you tell the Mayor this, did you
5 send him a text message, did you send him an e-mail?

6 COUNCIL MEMBER WATSON: Are there any
7 other important legal issues that emerged from your
8 review of the text messages, other than the
9 allegations of perjury?

10 THE WITNESS: I didn't look at --
11 there were -- there were -- the messages, as you
12 know, are voluminous. There were references to
13 different people and different things in there, but I
14 didn't formulate an opinion as to whether they were
15 suggestive of anything illegal. I just simply
16 focused on what was important to my client, and that
17 was were they lying about the circumstances under
18 which Brown was fired; were they lying about the
19 circumstances surrounding Nelthrope's leak to the
20 press; were they lying about their romantic liaisons.
21 So I didn't look at any of -- I looked at all the
22 text messages very carefully, but I didn't explore
23 anything that came to mind that might have suggested
24 something improper. So I -- the answer to your
25 question is I don't know; that's up to somebody else

1 to look at those and make a determination.

2 COUNCIL MEMBER WATSON: Thank you, Mr.
3 President.

4 COUNCIL PRESIDENT COCKREL: Council
5 Member Tinsley-Talabi.

6 COUNCIL MEMBER TINSLEY-TALABI: Thank
7 you, Mr. President.

8 Mr. Stefani, can you tell us -- can
9 you give me your opinion as to how certain persons of
10 the media obtained copies of the text messages?

11 THE WITNESS: Well, I was asked that
12 question during my deposition, and the Free Press
13 objected to that question on the basis that whoever
14 helped the Free Press get these messages is protected
15 by the journalist source privilege, and it was
16 pointed out that -- when I was asked, "Did you leak
17 the messages to the Free Press?" The objection was
18 they didn't want me to answer that question, because
19 whether I said -- even if -- whether I said yes or no
20 -- if I said no, it would reduce the number of
21 suspects, if you will, and it would help focus the
22 attention on the person who did leak the messages.
23 So I respectfully declined to answer that question,
24 and I'm going to respectfully decline to answer it
25 today, ma'am.

1 COUNCIL MEMBER TINSLEY-TALABI: In
2 your opinion, were the text messages obtained
3 legally?

4 THE WITNESS: You mean by the Free
5 Press or by me?

6 COUNCIL MEMBER TINSLEY-TALABI: Both?

7 THE WITNESS: Well, I know I obtained
8 them legally. I obtained them through the subpoena
9 process. How the Free Press got them, I'm not in a
10 position to speculate whether it was legal or not,
11 because, you know, I'm just not sure how they got
12 them.

13 COUNCIL MEMBER TINSLEY-TALABI: But in
14 terms of your own (inaudible) did you have any
15 (inaudible) release of the text message documents?

16 THE WITNESS: Well, that's the --
17 that's the same question with different wording, and
18 I'm going to respectfully refuse to answer it,
19 because if I were to deny to this Council that I had
20 anything to do with it, that would narrow the pool of
21 suspects and make it easier for those who have
22 something to gain by identifying who did facilitate
23 the Free Press, and I'm going to respectfully decline
24 to assist in that.

25 COUNCIL MEMBER TINSLEY-TALABI: So,

1 sir, do you know of anyone else who had access to the
2 text messages?

3 THE WITNESS: Well, there were a lot
4 of people in Mississippi that had access to them,
5 because that's where they were stored, and I do know
6 that several people made trips down to Mississippi to
7 try to get the text messages. Whether any of them
8 were successful or not, I don't know. But -- but
9 both the Mayor's people and I believe journalists
10 went down to try to get those messages, and so that's
11 a possibility. And frequently -- when you're
12 investigating -- now I'm not talking about this case,
13 but it's not all that unusual for someone who feels
14 that the revelation of information is a patriotic
15 thing, they might smuggle you the messages. I mean
16 like with the Dr. Ellsberg situation in the -- in the
17 Watergate case, information was given in that case by
18 somebody who thought they were doing the right thing.
19 I guess I -- I'm getting off --

20 MR. GOODMAN: Pentagon paper --

21 THE WITNESS: Pardon me?

22 MR. GOODMAN: Pentagon paper.

23 THE WITNESS: Okay. But in any event,
24 that's how good I am at history. But I'm -- I --
25 other than that, I can't answer that any further.

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MR. GOODMAN: Mr. President?

COUNCIL PRESIDENT COCKREL: Yes.

MR. GOODMAN: Just because if anyone has a question about procedural protocol here -- we could talk about it at another time during closed or open session, I'm not sure which -- the way in which a witness can be compelled to answer a question would be through an application to a court, or an order compelling an answer to the question. I have my own views on this, which I will express not at this time. But I just want everybody to know, and the witness to know as well, that there -- that that could happen.

COUNCIL PRESIDENT COCKREL: That was four questions, Council Member Tinsley-Talabi.

COUNCIL MEMBER TINSLEY-TALABI: I'm sorry I didn't get four answers.

COUNCIL PRESIDENT COCKREL: I don't know if there's any further elaboration that Mr. Stefani can give you. It sounds like on that score, probably not.

COUNCIL MEMBER TINSLEY-TALABI: Thank you.

COUNCIL PRESIDENT COCKREL: All right. Before we move on, President Pro Tem, you had a process question for Mr. Goodman?

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COUNCIL PRESIDENT PRO TEM CONYERS:

Yeah. Mr. Goodman, this -- this process is kind of like congressional hearings, whereas the show belongs to the members of this body, and you are here to help us, to facilitate us. This is not actually a courtroom, so we are supposed to be able to ask any gambit of questions that we would like to ask and have him answer, and he is always of a nature to decline, but it's like you're trying to limit our scope of questions that we can ask him.

MR. GOODMAN: I beg your pardon if you have perceived it that way. I'm not at all. I simply wanted you and the other members to know that the way in which one would force a witness to answer a question would be by an application to a court.

COUNCIL PRESIDENT PRO TEM CONYERS:

Yeah. Oh, no, we're not trying to force him; we just want him to answer if he can -- if he can. Okay, thank you.

COUNCIL PRESIDENT COCKREL: We need to move on now. Council Member Kenyatta is next.

COUNCIL MEMBER KENYATTA: Thank you, Mr. Chair.

Good afternoon again.

THE WITNESS: Good afternoon.

1 COUNCIL MEMBER KENYATTA: Mr. Stefani,
2 you, in your deposition and -- and here today,
3 testified that at some point in the facilitation,
4 there was somewhat of a breakdown in the agreement on
5 what would be paid and what could be paid. You then
6 passed to Mr. Washington a -- an envelope that had a
7 motion in it that you intended to file, and that was
8 given to Mr. McCargo, and after about 45 minutes,
9 there came back an opportunity for you and Mr.
10 McCargo to have conversation.

11 According to your -- your deposition
12 and testimony here, Mr. McCargo was somewhat stunned,
13 bewildered, whatever the case may have been, I can't
14 remember the exact language that was used in the
15 deposition, but he said he had no idea, and it wasn't
16 clear as what he had no idea of, but he had no idea,
17 and at that point he wanted to get in touch with the
18 Mayor, and assuming -- based on deposition, he did,
19 and he indicated that Mr. Johnson would be coming
20 down to join the negotiations; is that correct?

21 THE WITNESS: That's correct.

22 COUNCIL MEMBER KENYATTA: So, Mr.
23 Johnson did come down to join the negotiation, and as
24 a result of that negotiation, you put together a
25 handwritten agreement that included the text

1 messages, what was to happen with the text messages,
2 and all that was involved in that to be approved by
3 City Council. As far as you know, Mr. Johnson was
4 aware of the contents of that agreement, because he
5 was on the premises at that time?

6 THE WITNESS: To be -- yes, I believe
7 so. I remember shaking his hand and being introduced
8 to him, and I'm reasonably certain that was at the
9 conclusion of our negotiations, where we were leaving
10 to go to my office. He didn't come with us to my
11 office, but I believe he stayed there until we
12 arrived at this tentative agreement that we were --
13 that Val Washington suggested we reduce to writing
14 and everybody there was in favor of reducing it to
15 writing.

16 COUNCIL MEMBER KENYATTA: Okay. At --
17 at what time did you begin to discuss safety deposit
18 boxes and escrow accounts; was Mr. Johnson involved
19 or aware of that discussion at all?

20 THE WITNESS: I -- I have -- Mr. --
21 they were in a separate room, and if I may, nobody
22 has asked me this question, but I believe it's
23 somewhat responsive to your question; and that is
24 when I gave McCargo this motion I said, you know,
25 "I'm giving it to you and you either have to serve it

1 on your co-counsel, or you keep it to yourself;
2 whatever you deem appropriate." And later on -- he
3 then went back -- after he said I got people coming
4 down and I got a hold of the Mayor, he then went back
5 in with Copeland and -- and Osmauede and -- and had a
6 discussion with them, and I wasn't privy to that, but
7 I did ask him specifically did you decide to share
8 the text messages with the City attorney and Copeland
9 and Osmauede and Johnson, and he said, "I told them
10 that you had a motion that dealt with the Mayor's
11 credibility, but I did not tell them any specifics
12 about the text messages." That's, to the best of my
13 recollection, the way he answered it. And I
14 interpreted his remark to mean -- I interpreted it to
15 mean Stefani has come up with this motion that's
16 going to allege the Mayor committed perjury, and he
17 wants to resolve the whole thing, and I think we
18 should do that, but I'm not going to share the
19 specifics of my motion with them. I don't believe
20 they saw the motion, but I'm only going by what Mr.
21 McCargo told me. And after that time, I had no
22 discussions with them about text messages or anything
23 like that. I simply directed -- and it was clear
24 from the beginning that McCargo was the lead here.
25 Once he got involved in this case, he kind of took

1 over, even for Osmauede. He was the lead counsel.
2 And I -- I -- my dealings were with him. And I would
3 e-mail -- I'd copy Mr. Wilson Copeland and Osmauede
4 on my e-mails, but I never discussed with them -- so
5 when you -- your question was did Johnson -- was
6 Johnson there when we were negotiating, yes he was.
7 But was he there when we actually talked about
8 putting a confidentiality provision in the Settlement
9 Agreement? He was there. Whether he participated in
10 that discussion, I don't know, because I was in a
11 different room, but I -- I had no indication -- in
12 fact, I had just the opposite indication that
13 Johnson, Wilson Copeland, or Osmauede were told about
14 the text messages. That's the best I can do.

15 COUNCIL MEMBER KENYATTA: Okay, thank
16 you. And my final question is you -- I believe you
17 testified to the fact that the text messages came to
18 you from the SkyTel by way of three CDs. I -- I
19 believe you said three -- two or three --

20 THE WITNESS: I said we had three CDs,
21 but we made two of them. We copied -- SkyTel sent me
22 one CD period.

23 COUNCIL MEMBER KENYATTA: Okay. Okay.

24 THE WITNESS: And I printed it all out
25 into about 400 pages, and I made two copies, and --

1 and put them in places --

2 COUNCIL MEMBER KENYATTA: Okay.

3 THE WITNESS: -- that -- for safety.

4 COUNCIL MEMBER KENYATTA: So my
5 question then is about the copying. You had one CD.
6 So my question is were -- was everything turned over
7 to the Mayor's office or the Mayor, or this safety
8 deposit box, escrow account, whatever you want to
9 call it, that Mr. Mitchell got a hold to, was
10 everything turned over, all of the copies of the CDs,
11 all of the copies of the hard copies of what you
12 made, everything was turned over, you kept not one
13 shred of nothing?

14 THE WITNESS: As far as the text
15 messages go, we turned over the original and -- and
16 the two copies we made, plus the hard, so yes, they
17 were all turned over. There -- let me think -- just
18 think for a second. They were all turned over -- oh,
19 and even my motion, that had to be turned over too,
20 and as part of the agreement, I had to delete it from
21 my computer system, and we did that.

22 COUNCIL MEMBER KENYATTA: Okay.

23 THE WITNESS: So, the answer is yes.

24 COUNCIL MEMBER KENYATTA: Okay, thank
25 you.

1 COUNCIL PRESIDENT COCKREL: Council
2 Member Collins?
3 COUNCIL MEMBER COLLINS: Thank you,
4 Mr. President.
5 Mr. Stefani, you said you subpoenaed
6 the -- the text messages and I guess that's why you
7 had them, but the (inaudible) with the judge ordered
8 that they go to him -- did you ever tell the judge
9 that you received them instead of (inaudible)?
10 THE WITNESS: No, ma'am.
11 COUNCIL MEMBER COLLINS: (Inaudible)
12 not to serve the court. Is that not right?
13 THE WITNESS: That's correct.
14 COUNCIL MEMBER COLLINS: So it was
15 your duty to tell the judge?
16 THE WITNESS: Well, I -- I didn't
17 think it was, and I -- I -- if you'll allow me to
18 explain --
19 COUNCIL MEMBER COLLINS: I -- I would
20 like you to explain how when the judge said he wanted
21 those text messages coming to him, and -- and they
22 never got to him; they got to you and he never -- the
23 judge never ruled. You -- can you explain that?
24 THE WITNESS: Yes, ma'am. The judge
25 said he wanted the text messages sent to him in 2004,

1 because his practice was to -- often lawyers have a
2 confidential document that they'll -- they claim --
3 you know, judge, we don't want to let the other side
4 see this, because it's got confidential information;
5 that's called an in camera review. Means -- it means
6 the judge takes the document in his office and
7 reviews it to see if it's confidential or it should
8 be made public. And then they make a ruling; yes,
9 this is not confidential, or no, it's confidential.

10 Judge Michael Callahan explained to us
11 in the Bowman case that that's not his practice.
12 What he does is when somebody claims something's
13 confidential, he takes it into his office and he
14 doesn't tell either side whether he thinks it's
15 confidential. He lets the trial go on, and if
16 somebody lies, if somebody says something from the
17 witness stand that contradicts the information he's
18 looked at in camera, then he brings it in.

19 So, in -- in 2004, he told me send the
20 messages directly to me --

21 COUNCIL MEMBER COLLINS: He told you
22 or SkyTel?

23 THE WITNESS: He told me to tell
24 SkyTel to send the messages to him, which I did, and
25 that's when somebody from -- somebody identified

1 themselves as from the City of Detroit, told SkyTel
2 not to send the messages. So in 2007, when he told
3 me to re-subpoena those messages, he didn't say have
4 them sent to me; he just said I want you guys to re-
5 subpoena -- he directed his comment to McCargo, he
6 directed his comment to Wilson, and he directed his
7 comment to me. He says, "I want you guys to re-
8 subpoena" -- he didn't say have them sent to me.

9 By the time I got them, the trial was
10 over with, so there was no point in giving them --
11 because his practice is to wait until the witness has
12 testified and then bring the -- to the witness's
13 attention that the document he examined in camera
14 contradicts the witness's testimony. The trial was
15 over. So the reason I didn't give them to the judge
16 is when he directed they be re-subpoenaed near the
17 last day of the trial, he didn't say have them sent
18 to me. He just said re-subpoena them. And I re-
19 subpoenaed them, but at the time I got them, the
20 trial was over, so I didn't see any purpose in giving
21 them to him at that point, and if that was error or a
22 violation of the rules, then I'm -- I'm guilty of
23 that. There's no question about it. I did not give
24 the judge -- but I didn't understand --

25 COUNCIL MEMBER COLLINS: What does

1 officer of the court mean?

2 THE WITNESS: I think the off -- the
3 term officer of the court means that a lawyer owes a
4 fiduciary duty to the court, meaning the --

5 COUNCIL MEMBER COLLINS: Morally,
6 legally, and ethically.

7 THE WITNESS: I -- that sounds right.
8 And I don't think I violated that, but there are
9 others that may think I did, but I don't think I did.

10 COUNCIL MEMBER COLLINS: Because some
11 time had passed since the judge said he wanted them,
12 you just made the unilateral decision that the judge
13 didn't need them anymore -- Mayor needed them in
14 order to make a settlement.

15 THE WITNESS: Not really. I --

16 COUNCIL MEMBER COLLINS: (Inaudible)

17 THE WITNESS: No. I --

18 COUNCIL MEMBER COLLINS: -- judgment
19 call on --

20 THE WITNESS: No. The judge wanted
21 these -- wanted this message brought out at trial,
22 and we were tricked -- that is, the -- the plaintiffs
23 were tricked by someone to keep those messages from
24 coming forward, and I made the determination that
25 fool me once, shame on you, fool me twice, shame on

1 me, and I wasn't going to let someone else prevent
2 these messages from coming out, and I made the
3 determination that the trial was over, and the judge
4 did not specifically say -- he just said re-subpoena
5 -- he didn't even remember that they were supposed to
6 go to him. He's a busy judge, and four years went
7 by. He -- he didn't --

8 COUNCIL MEMBER COLLINS: So he doesn't
9 care today that he never got them, right?

10 COUNCIL PRESIDENT PRO TEM CONYERS:
11 But that's not --

12 THE WITNESS: Oh, I don't know. I
13 don't know that at all. He -- he did indicate to the
14 paper that if he did have them, he would have ordered
15 a new trial on the damages. In other words, we would
16 have gone back to that jury and said hey, we want
17 more money than you gave us originally, and you have
18 to decide what the damages were. Not -- he wasn't
19 going to retry the -- the liability part; that had
20 been decided by the first jury, but he said if he had
21 gotten those messages, he would have retried the
22 liability part of the case. That's what the paper
23 said. Whether he actually said it or not, I have no
24 idea, because I've never talked with him about it.

25 COUNCIL MEMBER COLLINS: Thank you,

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Mr. President.

COUNCIL PRESIDENT COCKREL: President
Pro Tem is next.

COUNCIL PRESIDENT PRO TEM CONYERS:
Oh, just on your point. Judge Colombo -- to my
recollection, Judge Colombo said he would have
admonished the Mayor, not that he would have ordered
a new trial, but -- opinions about --

THE WITNESS: Well, I'm talking about
Judge Callahan, ma'am.

COUNCIL PRESIDENT PRO TEM CONYERS:
That's who I'm talking about also.

My next question to you is did you
tell the news media the identity of the person who
was no longer at SkyTel in order for them to get the
same information you had in order to send them
directly to this mysterious lady in order for the
newspaper to get the text messages?

THE WITNESS: This mysterious person,
as you've described him --

COUNCIL PRESIDENT PRO TEM CONYERS:
No, you described him as a mysterious person, because
you never told us their name.

THE WITNESS: No, I said the former
employee -- one of the Council members said

1 mysterious individual, and now you said mysterious
2 again. He's a former employee of SkyTel. His name
3 was on the subpoenas -- the first three subpoenas
4 that were sent out in 2004, his name was on them.

5 COUNCIL PRESIDENT PRO TEM CONYERS:

6 Okay. But the newspaper didn't know how to get in
7 touch with him, so did you tell the news media how to
8 get in touch with --

9 THE WITNESS: No. No, I didn't.

10 COUNCIL PRESIDENT PRO TEM CONYERS: So

11 they didn't find out from you how to get in touch
12 with this former employee of SkyTel so they could
13 know who to call at SkyTel -- the lady that you sent
14 the subpoena to to get the information, they had no
15 knowledge of that?

16 THE WITNESS: That's all they had to
17 do at that time is look at the subpoena.

18 COUNCIL PRESIDENT PRO TEM CONYERS:

19 But the subpoena didn't tell them where they work --
20 currently working now, did it?

21 THE WITNESS: No, it didn't mention
22 the former employee --

23 COUNCIL PRESIDENT PRO TEM CONYERS: Oh

24 --

25 THE WITNESS: -- but it mentioned the

1 -- the latest subpoena that went out in October of
2 2007, had the employee's name that the other
3 gentleman, who no longer worked there, told us had
4 custody of the records. So, anybody who looked at
5 that subpoena would have known who we got the records
6 from. That's -- that's in the -- in the records.

7 COUNCIL PRESIDENT PRO TEM CONYERS: I
8 guess, sir, my question is, if -- if they're no
9 longer the employee there, and when you called to try
10 to get them, they told you it was under new
11 management and you couldn't get them, how would the
12 former employee know who had those text messages?

13 THE WITNESS: Because he knew who took
14 over his job. He -- I didn't talk to the person who
15 took over his job. I just talked to probably their
16 legal counsel.

17 COUNCIL PRESIDENT PRO TEM CONYERS:
18 Mm-hmm.

19 THE WITNESS: And he said, "Oh,
20 whoever told you that really doesn't understand,
21 doesn't know what they're talking about. Here's the
22 person you want to subpoena that has custody of the
23 records." And we did that. We put out a new
24 subpoena with that lady -- I believe it was a lady's
25 name on it, and a few days later, we got the records.

1 COUNCIL PRESIDENT PRO TEM CONYERS:
2 Have you --
3 COUNCIL PRESIDENT COCKREL: That's
4 four questions, Pro Tem.
5 COUNCIL PRESIDENT PRO TEM CONYERS:
6 But that was only one question.
7 COUNCIL PRESIDENT COCKREL: No, it was
8 four questions.
9 COUNCIL PRESIDENT PRO TEM CONYERS:
10 That was only one question -- it was one question,
11 did he give the media the identity of the lady at the
12 SkyTel in order to get the messages. That's one
13 question --
14 COUNCIL PRESIDENT COCKREL: It was
15 four questions. We need to move on. Council Member
16 Cockrel is next, and then following that, unless any
17 other Council members have any -- to use Mr.
18 Goodman's term, burning questions, in view of the
19 lateness of the hour --
20 COUNCIL PRESIDENT PRO TEM CONYERS: I
21 did have a burning question. And that was just one
22 question, Mr. President.
23 COUNCIL PRESIDENT COCKREL: President
24 Pro Tem -- President Pro Tem, I've got --
25 COUNCIL PRESIDENT PRO TEM CONYERS:

1 (Inaudible) so go on.

2 COUNCIL PRESIDENT COCKREL: No, I'm
3 chairing the meeting.

4 COUNCIL PRESIDENT PRO TEM CONYERS:
5 (Inaudible)

6 COUNCIL PRESIDENT COCKREL: -- Council
7 members, as I said, have any other burning questions
8 for Mr. Stefani, in view of the lateness of the hour,
9 we should move on, because we do have two other
10 witnesses that we have yet to get to, and it's 2:15.
11 So, Council Member Cockrel.

12 COUNCIL MEMBER COCKREL: Thank you.
13 And I just wanted to say for the record, that I --
14 I'm less concerned about how the text messages got
15 out than the consequences of the information that's
16 been revealed by them, and in that regard, Mr.
17 Stefani, I believe in your earlier testimony you
18 indicated something to the effect that Ms. -- the
19 Mayor and Ms. Beatty were intending to dismantle the
20 internal affairs bureau or take it out of commission,
21 or do something with it, prior to the creation of or
22 the revelation of the, you know, the documents that
23 nobody saw but Ms. Beatty, that got destroyed, but
24 resulted in this mess that a number of us, myself
25 (inaudible) including Ms. McPhail when she was here,

1 because of the federal investigation and review of
2 this -- Deputy Chief Brown's firing, because we knew
3 at the time it was terrible public policy. So could
4 you elaborate on what you meant when you talked about
5 this intention to dismantle the internal affairs
6 bureau by the Mayor's office?

7 THE WITNESS: Ms. Cockrel, in all
8 honesty, I think, and forgive me if I downplay the
9 other questions that have been asked of me. I think
10 that's the most important question I've been asked at
11 this hearing. And it stems from Jerry Oliver coming
12 here and wanting to change the culture of the Detroit
13 Police Department. He chose Gary Brown to be his
14 point man, and he wanted the deaths that were
15 occurring in the lock-ups to -- to be reduced; he
16 wanted the shootings that occur too often to be
17 reduced; and he wanted citizens' complaints to be
18 documented, not swept under the rug. And he put
19 Brown in charge of that operation. And Brown staffed
20 his -- the internal affairs division with the most
21 capable people he could find. Internal affairs
22 didn't become a retirement place, it became a place
23 that if you worked hard, you could look forward to a
24 promotion to a higher rank or to a -- a different
25 assignment. He -- he really emphasized doing this

1 reform.

2 And the text messages indicate that
3 two days -- approximately two days before the so-
4 called anonymous letter appeared on -- under Ms.
5 Beatty's door, that she told the Mayor or the Mayor
6 asked her, "Who did we decide to appoint as commander
7 to replace Parshell (ph)" and the other guy who was
8 there, I forgot his name -- "Who did we decide to
9 replace them with when Brown is gone?" and the
10 message came back, "We were gonna appoint McClure
11 (ph) to do that" and then a message --

12 COUNCIL MEMBER COCKREL: Fred McClure
13 --

14 THE WITNESS: Yes, Inspector McClure.
15 Then the message came back -- well, words to this
16 effect, "That McClure, I don't know if he's our best
17 choice, because he was stupid enough to tell the
18 chief of police that we were getting rid of Brown" or
19 so many words to that effect. And the message then
20 came back, "Well, if he's that stupid, maybe he's not
21 a man for the job." And it was clear that they were
22 conspiring behind the chief of police's knowledge to
23 gut that department that the chief looked at as the
24 spearhead of the reform, and in my opinion, this case
25 isn't about who's doing who, as they say; it's not

1 about \$8,000,000.00; it's about a Mayor gutting the
2 reforms that he's told the public to vote for him
3 because he's gonna reform the city, but instead he
4 goes back and kicks out the people who are reforming
5 -- doing their best to do the job, he kicks them out
6 and puts -- if you'll pardon the expression -- good
7 'ole boy network -- the good 'ole boys who won't do
8 anything without checking with the Mayor first, or
9 any decision they make -- hey, is this guy related to
10 the Mayor, is he related to this -- before they
11 decide on whether to prosecute. He put that good
12 'ole boy system back in effect, and to me that's the
13 greatest tragedy to the citizens of Detroit, because
14 they were on their way to having a good police
15 department.

16 Brown wasn't doing it by himself;
17 there were hundreds of officers that were doing it,
18 and the Mayor, because of his ego, in my opinion,
19 stopped that process, and I think that's the greatest
20 harm that's been done. Eight million dollars in
21 taxpayer money is a lot of money, but the efficacy of
22 the Detroit Police Department and whether they're
23 going to respond to citizens' complaints in writing,
24 and whether people are going to die in jails, and
25 whether cops are going to be a little too quick to

1 squeeze the trigger, that was important changes that
2 the justice department had mandated, and Brown was
3 the head of it, but when it was decided to kick Brown
4 out, they didn't care about the consequence. That's
5 my opinion.

6 COUNCIL MEMBER COCKREL: Did -- did
7 you have any (inaudible) recall (inaudible) was put
8 in charge of the -- whatever was being called civil
9 rights integrity bureau, etcetera, etcetera at that
10 point, and then she was removed. Do you have any --
11 any perspective on that action by the administration?

12 THE WITNESS: It was another example
13 of the -- Beatty was the Mayor's chief of staff.
14 Cherise Fleming-Freeman (ph) was the chief's -- chief
15 of staff. The chief of police had a chief of staff;
16 the Mayor had a chief of staff. They were working
17 together. But they were working behind the chief's
18 back. The chief wanted -- I believe it was Cara Bess
19 (ph) to assume this new role of -- of implementing
20 the consent decree, and the Mayor didn't want her.
21 And there were text messages that said the chief
22 thinks she -- he's got a chance of getting her
23 appointed, but he doesn't know we've already made up
24 our mind, and some police executive said the chief
25 asked us whether we knew anything about his choice

1 being blackballed, if you will, and Beatty -- and
2 Beatty wrote back, "Did you tell him?" And they
3 said, "Of course not."

4 I mean they had a conspiracy going --
5 going behind the chief's back to put people that they
6 -- that Beatty felt were more suitable for running
7 the police department than Oliver did, and that's
8 again, a crime against the citizens of Detroit, in my
9 opinion. When I say crime, I mean it was a wrong
10 committed against the citizens of Detroit that far
11 outweighs the \$8,000,000.00 that these people were
12 awarded in just compensation for what they went
13 through.

14 COUNCIL MEMBER COCKREL: Thank you
15 very much, Mr. Stefani. Thank you. That confirms my
16 very worst fears about this entire mess.

17 COUNCIL PRESIDENT COCKREL: Council
18 Member Jones is next.

19 COUNCIL MEMBER JONES: Thank you, Mr.
20 President.

21 When the attorney told you that the
22 Mayor rejected the first settlement, at any point in
23 time did you ask whether or not the -- it had come to
24 the City Council, or whether or not the City Council
25 had approved it?

1 THE WITNESS: Oh, yes. Personally,
2 and I don't have proof of this, but the document that
3 says the Mayor rejects the settlement, came to me
4 weeks after the time had expired for him to accept it
5 or reject it. All along, I believe he accepted it
6 because he got on the news two days after the 27th --
7 the 29th or the 28th and he said we've agreed to
8 settle the case; I've talked to (inaudible), I've
9 talked to my advisors, and they think it's best for
10 the city. So I assumed we settled the case. A month
11 or more later -- later I'm told well, the Mayor's
12 going to reject it because of this Free Press stuff,
13 and McCargo or -- or the Mayor, I can't remember who
14 it was, said we're going to give them a second --
15 we're gonna -- we're gonna adopt this second
16 settlement agreement, which is the one City Council
17 approved anyway. Which, you know, it left me
18 baffled, because the City Council acted to approve
19 this somewhere around I believe the first of November
20 --

21 COUNCIL PRESIDENT COCKREL: October
22 23rd.

23 THE WITNESS: Okay, October 23rd, and
24 now they're telling me three weeks later a new
25 document that we just finished drafting on December

1 5th, that's the one the City Council approved anyway.
2 Now, what they meant by that -- now in hindsight I
3 think they meant that this is all the City Council
4 was told, so we're just doing a document that
5 corresponds with the information they were given.

6 COUNCIL MEMBER JONES: So, even though
7 it was after the fact, did you even ask the question
8 of how could the City Council accept this and I
9 haven't even seen it myself?

10 THE WITNESS: I didn't. But in -- I'm
11 telling you the truth, as I sit here today, I've told
12 you the truth, and I -- I honestly didn't know
13 whether the City Council saw this. If I were sitting
14 on that City Council's bench, and I saw that the
15 Mayor perjured himself, I might have approved the
16 settlement, because it might have been the best thing
17 for the City of Detroit, because it was going to end
18 up being ten or twelve million dollars by the time it
19 was appealed. So I could conceive that the City
20 Council would approve it if they knew everything.
21 They might not like the Mayor after that, but they'd
22 still approve it in their capacity as elected
23 officials -- representatives of the City of Detroit.
24 So when they said -- I never said -- and it wasn't
25 any of my business, did you tell the City Council

1 about the text messages; I thought they did, but I
2 didn't know. And that's the truth.

3 COUNCIL MEMBER JONES: -- ask you what
4 attorneys that you deal with -- can you just tell me
5 all the attorneys that you dealt with through this
6 process, and can you tell me at what point in time
7 did any attorney represent themselves as a city
8 attorney, and -- and at what point in time the
9 attorney represent themselves as the Mayor's
10 attorney, or what --

11 THE WITNESS: Well, at some point in
12 time, the -- the news media commented that Valerie
13 Osmauede and another lawyer, Brooks (ph) was her
14 name, I believe, another lawyer from the City Law
15 Department, they were handling this case, and the
16 chief of police had an attorney, Hathaway (ph), and
17 Bob Berg (ph) has his -- had his own attorney from --
18 around Detroit, and there was criticism in the
19 newspaper that the -- the Mayor was -- the City was
20 funding the Mayor's defense. So at that point, he
21 went out and got Mr. McCargo and he got Mr. Copeland
22 involved. And I didn't know who was paying for who;
23 I mean that's not my business. I just know that
24 Copeland came in as co-counsel to the City, along
25 with Ms. Osmauede, and McCargo came in as co-counsel

1 to the Mayor, along with Osmauede. So, Osmauede
2 throughout -- from the beginning to the end was the
3 attorney for the City and the Mayor, but McCargo was
4 like co-counsel with her for the Mayor, and he -- and
5 Copeland was co-counsel with her and the City.

6 COUNCIL MEMBER JONES: Thank you.
7 Thank you, Mr. President.

8 COUNCIL PRESIDENT COCKREL: All right.
9 Council Member Watson?

10 COUNCIL MEMBER WATSON: Thank you, Mr.
11 President.

12 I'm going to ask, if you are -- you
13 know -- justice department has a consent decree
14 engaging the City (inaudible) same time as much of
15 this was emerging. At any point over the last four
16 years, while you were litigating, did you make any
17 contact with the federal monitor who has been
18 contacted by the City to oversee the consent decree
19 issues -- included issues that had to do with
20 internal affairs?

21 THE WITNESS: No, I didn't talk to the
22 federal monitor at all. I did talk with the U.S.
23 Attorney's Office, because Mr. -- one of the things
24 that the Mayor said during his deposition as to why
25 he fired Brown -- you know, he gave a whole litany of

1 reasons. Some were consistent, some were
2 inconsistent, but one of the reasons was that Brown
3 wasn't effective in making -- in carrying out the
4 consent decree. Now, the consent decree actually
5 wasn't entered until I believe a week after Brown was
6 fired, or a week before Brown was fired. But before
7 that, the City and the justice department were
8 negotiating whether to reduce this -- these
9 requirements -- a whole list of requirements that the
10 City had to change; they were negotiating whether to
11 just put them in a memorandum of understanding, like
12 a letter agreement that says here's what you're going
13 to do, or put it (inaudible) and make it a consent
14 decree, which is a court order that says you're going
15 to do this, and it's standard practice to try to get
16 the justice department to do it a letter of
17 understanding, because the -- it's less formal, the -
18 - you don't have to run to court all the time. So
19 when Brown was there, they were trying to get it
20 reduced to a letter of understanding, and after he
21 left, it became a consent decree.

22 Well, one of the things the Mayor said
23 in his deposition is that he terminated Brown because
24 Brown wasn't effective in carrying out the rules or
25 the guidelines of the proposed consent decree, and I

1 did call the -- the United States attorney and ask
2 them if that was true, and off the record they were
3 furious. They -- they were absolutely furious that
4 statement was made. But on the record they said
5 we'll pass this on to the justice department in
6 Washington, D.C., and they'll be in touch with you,
7 but don't -- don't hold your breath, because it'll
8 probably be years and years and years before they get
9 back with you, because their policy is not to discuss
10 something like this. And that's exactly -- that's as
11 far as the conversation went.

12 But when I said that the Mayor said he
13 -- he was in -- one of the reasons he was fired was
14 because he wasn't responsive to the consent -- at
15 that time they were negotiating a consent decree, he
16 wasn't making the changes required, the people I
17 talked to were furious that that was said, and --
18 because they felt that he was doing an excellent job
19 -- he represented good things about the future of
20 Detroit, as -- as did Walt Harris and Nelthrope.

21 Believe me when I tell you this,
22 ladies and gentlemen, Walt Harris and Nelthrope are
23 outstanding men. They're the exact kind you should
24 have as police department staff. Walt Harris is a
25 college graduate; grew up in Detroit; his wife's a --

1 an optometrist; three young kids; a man of principle.
2 Nelthrope is just dependable as hell. He's the guy
3 who you would say there's a stranger in my backyard
4 at two in the morning, he's the guy who shows up.
5 And those are three good people. And I spent a
6 number of years with the police department. I know
7 the difference between good officers -- I was a
8 sergeant myself, and these three men -- we should be
9 out recruiting more like them, rather than punishing
10 them, and that's my honest opinion.

11 COUNCIL MEMBER WATSON: In your
12 history as a law enforcer, as an attorney, as a
13 member of the FBI, have you ever seen police officers
14 (inaudible) kind of situation to have been denied
15 resources (inaudible) access to money to take care of
16 their families during -- during the course of
17 litigation? Is this a new kind of case for you? Has
18 anything in your career mirrored this?

19 THE WITNESS: The only thing new about
20 this case for me is the outcome. I mean it's rare
21 that politicians, and forgive me for using that word,
22 but bureaucracies tend to -- in all police
23 departments, tend to take the position that it's my
24 way or the highway, and if you disagree with the
25 boss, you can get -- you can get your career ruined

1 like that. That's not that unusual. Human beings
2 are human beings, and in Detroit it's even worse
3 because -- I'm telling you, you have no idea how many
4 people have contacted me that do the right thing,
5 turning in somebody, and because they cross the thin
6 blue line, they're treated badly. So they switch to
7 a new precinct or a new division, and the phone is
8 picked up saying hey, you're getting this guy coming
9 over, his name is, you know, Willie Brown, and we
10 want you to be tough on him because the son of a
11 bitch did this or did this -- and that happens all
12 the time in Detroit. You -- it follows you -- the --
13 the telegraph; it gets there ahead of time, and you
14 get -- and that's one of the reasons Nelthrope and --
15 and Harris got sent to the -- the precinct they got
16 sent to, because that was -- they were pretty tight
17 with Kwame and he could -- he could see that they got
18 punished.

19 COUNCIL PRESIDENT PRO TEM CONYERS:

20 You mean the Mayor?

21 THE WITNESS: I'm sorry.

22 COUNCIL PRESIDENT COCKREL: She has
23 the floor.

24 THE WITNESS: I'm sorry.

25 COUNCIL PRESIDENT PRO TEM CONYERS: I

1 know, but he said Kwame.

2 THE WITNESS: I -- I am, and I'm
3 sorry. I apologize. Mayor Kwame Kilpatrick and his
4 bodyguards, especially Jones -- Jones and Martin, had
5 the ear of the command of that precinct. So yes,
6 it's not unusual what happened here. What is I think
7 somewhat unusual is that the truth came out. That --
8 you know, even if we had won this case, which we did,
9 and the jury believed us, but what did the Mayor say?
10 It was because they were citizens of Detroit. We --
11 we had a mock trial of this case in June. We had 14
12 jurors, seven of which were African Americans, eight
13 of which were Detroit residents, and they returned
14 verdicts higher than the real jury. It was a
15 practice -- you know, you -- you learn -- you go have
16 a mock trial for practice purposes. It had nothing
17 to do with the make-up of the jury. These guys had a
18 good case. But the Mayor came out and said oh it was
19 because we didn't have a jury that was representative
20 of the city. So even though we won, there would have
21 been a doubt in a lot of people's minds, and what
22 these text messages show that hey, that wasn't
23 because there was only one black juror that decided
24 this way. It was because -- in all due respect in my
25 opinion, the Mayor was lying through his teeth and so

1 was Christine Beatty. And the release of those
2 messages sort of shows that even though the jury
3 believed Brown, now I think more people believe
4 Brown, Nelthrope, and Harris than just the jurors.

5 COUNCIL MEMBER WATSON: Thank you. My
6 colleagues mentioned earlier that City Council
7 members at one point did try to express grave concern
8 about what miscarriage of justice in the firing of
9 honored police officers. Were -- were you -- access
10 to that information; were you made aware, or were
11 your clients aware that the City -- not just the
12 executive branch, but also the legislative branch?

13 THE WITNESS: Yes, ma'am. I had -- I
14 had conversations with several members of City
15 Council, where they asked was there a possibility of
16 settlement -- settling the case, and I asked for
17 their help. They said they would intervene on my
18 behalf. But the bottom line was that the Mayor
19 didn't listen to his lawyers, he didn't listen to
20 anybody. He was a -- you know, he's a young man who
21 I believe maybe has some things to learn, and --

22 COUNCIL MEMBER WATSON: Thank you, Mr.
23 President.

24 COUNCIL PRESIDENT COCKREL: You're
25 welcome. Council Member Reeves is next.

1 COUNCIL MEMBER REEVES: Thank you, Mr.
2 President.

3 Attorney Stefani, you have quoted a
4 lot of information that you alone has had privy to in
5 the text messages, quoting, calling names, and giving
6 your opinion. What necessarily was supposed to be
7 kept confidential (inaudible) just his sex life?
8 What information was supposed to be private and
9 confidential?

10 THE WITNESS: All of the text messages
11 were supposed to be confidential. I couldn't be
12 testifying here today under the agreement we signed.
13 I -- I mean that's not correct. I mean I had to be
14 compelled by a subpoena to -- to give these answers;
15 otherwise, I would be in violation of that
16 Confidentiality Agreement. So even though I've
17 answered your questions as truthfully and as fully as
18 I could, that text -- that Settlement Agreement does
19 not allow me to do it unless I'm compelled by law,
20 and -- and -- or subpoenaed to testify. And so
21 that's why I've been able to do that. But I
22 certainly haven't been able to do that with the press
23 or --

24 COUNCIL MEMBER REEVES: Well, the
25 press is aware of what you're saying today, and a lot

1 of the information that you've given should have been
2 confidential. The quotes, your opinion --

3 THE WITNESS: I think -- I think the -
4 - the message -- the settlement agreement would
5 prevent me from saying these things I've had -- I've
6 said today --

7 COUNCIL MEMBER REEVES: (Inaudible)

8 THE WITNESS: Pardon me, ma'am?

9 COUNCIL MEMBER REEVES: Are you not
10 going to give the money back (inaudible) --

11 THE WITNESS: No. I didn't violate
12 the agreement, because I'm being compelled to give
13 this information, and I certainly didn't know whether
14 this was going to be a closed door hearing or --

15 COUNCIL MEMBER REEVES: (Inaudible)
16 not closed.

17 THE WITNESS: But I mean you can have
18 a session to discover -- discuss litigation. But in
19 any event, I answered because I was subpoenaed to do
20 so, and I believe that the truth should come out.

21 COUNCIL MEMBER REEVES: Thank you, Mr.
22 President. I just think a lot of the comments should
23 have been objected to, especially calling our Mayor a
24 liar, as he's called him several times.

25 COUNCIL PRESIDENT COCKREL: I don't

1 have any further questions, and seeing none, I think
2 we should turn the floor back over to Mr. Goodman
3 briefly, if you have any closing comments or
4 questions for Mr. Stefani, and then after that, we
5 should move on to Mr. Copeland.

6 MR. GOODMAN: Very briefly, and we
7 will move on.

8 BY MR. GOODMAN:

9 Q Mr. Stefani, you said that the Council may well have
10 approved the settlement, even had it known of the
11 Confidentiality Agreement and of the text messages;
12 is that correct, that was your testimony?

13 A Yes, I believe so.

14 Q Or it may not have?

15 A That's correct.

16 Q The fact is that the decision should be that of the
17 City Council, and that needs to be based upon having
18 complete information, not based upon having
19 information withheld or concealed; would you agree
20 with that?

21 A Yes, I would.

22 MR. GOODMAN: I have a number of other
23 questions, but I want to confine my questioning just
24 to two rather narrow matters, and then we can excuse
25 you.

1 BY MR. GOODMAN:

2 Q The first is this; the Confidentiality Agreement, in
3 addition to calling for the confidentiality of the
4 text messages, also calls for confidentiality of
5 material relating to your clients as well; is that
6 correct?

7 A That's correct.

8 Q Can you comment on what that material was or may have
9 been?

10 A Well, there was some medical records of Nelthrope
11 that the -- Defendants tried to introduce at trial,
12 and we filed a motion -- a motion in limine, which
13 means a motion before trial to get a ruling on what
14 kind of evidence will be allowed at trial. We filed
15 a motion in limine to exclude those medical records,
16 and the judge excluded them. It was really the
17 medical -- medical history of a member -- an ancestor
18 of Nelthrope's. And the other thing was -- the other
19 confidential information involved a relative of Gary
20 Brown's being questioned by the police department for
21 her association with a person believed to be a
22 narcotics dealer, and that also was the subject of a
23 motion in limine, but the City and the Mayor's
24 counsel agreed not to try to introduce that
25 information. They recognized that -- prejudice --

1 with the jury, I think, but they decided that they
2 weren't going to introduce it, so it was kept out
3 also.

4 Q And the fact that these matters were placed in the
5 Confidentiality Agreement surrounding the settlement,
6 was that your idea?

7 A No, it wasn't our idea, because they were already in
8 the police department files; both the medical records
9 of Nelthrope, and this investigation of one of
10 Brown's relatives, were already in the policy
11 department. That's what they were trying to
12 introduce, these police department records.

13 Q So, if it wasn't your idea, why was it included in
14 the Confidentiality Agreement?

15 A Because Mr. McCargo wanted to make the
16 Confidentiality Agreement seem to be a quid pro quo.
17 In other words, it would be protecting both my
18 clients and his client, and I had no objection to it,
19 but I never requested it or asked for it.

20 Q Finally, you've indicated that you deleted the -- the
21 brief, which included quotations from these text
22 messages from your computer; is that right?

23 A That's correct.

24 Q Do you know whether it would be possible to
25 reconstruct that information if a computer expert

1 were to go back and dig into your computer once
2 again?

3 A You know, as I said earlier, I'm not a technical guy,
4 but some of my friends who are private detectives has
5 -- have said that, you know, information on a
6 computer hard drive is, you know, always retrievable.
7 I don't know the answer to the question, but I've
8 been advised that it is. But the City never tried to
9 force me to destroy my computer hard drive, or
10 anything like that. I just deleted it, and they took
11 my word for it, and -- and as I told you before, I
12 really believe the lawyers in this case, including
13 Mr. McCargo, although he obviously had the toughest
14 role to play, I think they were all acting what they
15 -- in a way that they thought was appropriate. There
16 was nothing sub rosa or secretive about this. It was
17 just so matter of factly; here's the way we can avoid
18 making this public by splitting into two agreements,
19 and nobody said hey are we violating the law; they
20 didn't think -- I'm sure they didn't think they were
21 violating the law, and I certainly, you know, even
22 though I may have given the impression that I think I
23 know a lot about a lot of things, I'm not very
24 knowledgeable on the Freedom of Information Act.

25 Q So -- so that if this body were to choose to subpoena

1 your hard drive and pay for a computer expert to
2 reconstruct this information, it might be
3 retrievable; is that correct?

4 A And I don't know. I -- I just told you, I don't
5 know. And I don't know -- nobody has done that, so I
6 have no idea.

7 MR. GOODMAN: Thank you very much, Mr.
8 Stefani. I want to -- on -- on my behalf, and on
9 behalf of -- City Council, thank you very much for
10 appearing here, taking your time, and giving
11 forthcoming answers. Thank you very much.

12 May the witness be excused?

13 COUNCIL PRESIDENT COCKREL: Yes.
14 Thank you very much, Mr. Stefani.

15 MR. STEFANI: Thank you, sir.

16 COUNCIL PRESIDENT COCKREL: Thank you
17 for your time. Council will now call forward, as Mr.
18 Stefani is leaving, attorney Wilson Copeland.

19 Mr. Copeland, if you could actually
20 pause right there by Ms. Monte, who will administer
21 the oath upon you.

22 COURT REPORTER: Sir, do you solemnly
23 swear or affirm to tell the truth, the whole truth,
24 and nothing but the truth, so help you God?

25 MR. COPELAND: I do.

1 MR. GOODMAN: Good afternoon, Mr.
2 Copeland. I want to thank you for your patience.
3 Would you --

4 COUNCIL PRESIDENT COCKREL: Mr.
5 Copeland -- one second, Mr. Goodman. Mr. Copeland,
6 we want to follow the same format as we did with the
7 previous witness, so Mr. Goodman will make some
8 introductory comments and begin an initial line of
9 questioning. Once he is finished, Council members
10 will question you. So, Mr. Goodman, the floor is
11 yours.

12 MR. GOODMAN: Yes; thank you, Mr.
13 President. I'm going to follow your lead and take my
14 jacket off.

15 COUNCIL PRESIDENT COCKREL: It is warm
16 in here.

17 WILSON COPELAND

18 DULY SWORN, CALLED AS A WITNESS, TESTIFIED AS FOLLOWS:

19 EXAMINATION

20 BY MR. GOODMAN:

21 Q State your full name, please.

22 A Wilson A. Copeland the second.

23 Q Mr. Copeland, you've been subpoenaed to appear here
24 today; is that correct?

25 A I have been.

1 Q And before you were subpoenaed, you indicated to me
2 your willingness to appear here without a subpoena;
3 is that correct?

4 A That is correct.

5 Q So your appearance is both voluntary and -- and
6 willing and -- and forthcoming; is that right?

7 A That is correct.

8 Q And I want to thank you very much for that, and also
9 thank you for your services to your client, which has
10 been the City of Detroit, and ask you some questions
11 about these matters. I'm going to shorten my -- my
12 examination, because we do have other -- one other
13 witness, but you should feel free to take as long as
14 you want or you deem necessary to answer the
15 questions, and I will ask you when I'm done if you
16 have anything you care to add, and then Council
17 members can also and will also ask questions as well.
18 Agreeable?

19 A Yes, it is.

20 Q Mr. Copeland, you, I believe, represented the City of
21 Detroit at one time in the case of -- of Brown and
22 Nelthrope versus the City of Detroit; is that
23 correct?

24 A That is correct.

25 Q When did you become involved in those nego -- in that

1 litigation?

2 A In 2004.

3 Q And what was the -- withdraw that for the moment.

4 You were in private practice in the City of Detroit;
5 is that correct?

6 A That is correct.

7 Q And located in downtown Detroit; is that right?

8 A That is correct.

9 Q And have been for many years, I believe; am I right?

10 A That is correct.

11 Q And I also know very well that you are a Detroit
12 resident; is that correct?

13 A I -- Detroit from date of birth to this moment,
14 except for seven years away at school.

15 Q Now, what -- while you were in private practice,
16 under what circumstances were you brought into this
17 case to represent the City of Detroit? And what I'm
18 asking is were you brought in as an independent
19 counsel representing a client, in this case, the City
20 of Detroit?

21 A Our law firm was retained to provide services to the
22 City in this case after the case had been filed and
23 had proceeded through some of the early stages of
24 litigation.

25 Q And what did you understand the reason was that you

1 were brought into this particular case?

2 A It was felt that my trial experience would be of some
3 benefit to the City Law Department.

4 Q You are an experienced trial lawyer; is that correct?

5 A Yes.

6 Q How long have you practiced law?

7 A Thirty-four years in June.

8 Q Now, when you got into the case, what stage was the
9 case?

10 A The case had been mediated, and there were
11 outstanding discovery issues. The first matter of
12 note that I remember developed when the subpoena was
13 issued or the request was issued by Mr. Stefani for
14 the text messages in 2004.

15 Q Did you litigate that motion yourself?

16 A I did not.

17 Q Were you brought in after the judge had ruled on that
18 motion?

19 A No. I did not -- when you use the term litigate, I
20 was part of the defense team at the time the issue
21 arose; however, I did not draft the motion, nor did I
22 argue it. I don't even believe I attended the
23 motion.

24 Q After that motion was decided, was there an appeal?

25 A There was an appeal, but the appeal did not have to

1 do with that motion.

2 Q The appeal had to do with what?

3 A There were issues regarding matters related to
4 Officer Nelthrope. There were issues regarding
5 governmental immunity. The issues that were going to
6 be litigated were being questioned by both sides, and
7 there were a series of motions and ultimately this
8 matter went to the Court of Appeals, ultimately
9 winding up in the Supreme Court. I believe that we
10 were on appeal for maybe a year and a half, two
11 years.

12 Q And ultimately sent back by the Supreme Court for
13 trial; is that correct?

14 A That is correct.

15 Q And I believe that you -- you sat here through Mr.
16 Stefani's testimony and heard all if it today, did
17 you not?

18 A I did.

19 Q I think he said it was in May of '07 that it was sent
20 back; is that about correct?

21 A It was mid-year 2007. I have no reason to dispute
22 that.

23 Q All right. Now, up until that time; that is the time
24 that the Supreme Court sent the case back for trial,
25 were you engaged in any settlement negotiations with

1 the plaintiffs in this case?

2 A No.

3 Q Did -- were you told or informed or any settlement
4 negotiations?

5 A I believe that there had been discussions and I -- to
6 use the term settlement negotiations is perhaps
7 somewhat broadly based. It is not uncommon for a
8 demand to be made known. I don't know if that had
9 been done formally. I don't know if it had resulted
10 in actual negotiations. I know that there was a
11 demand for several million dollars that came in
12 probably before and certainly after the mediation.

13 Q When you say mediation, this is what is now called
14 case evaluation?

15 A I -- I -- the -- the new term is case evaluation,
16 right.

17 Q And the case evaluation in this case, again Mr.
18 Stefani testified was \$2.3 -- \$2,350,000.00; does
19 that sound about correct?

20 A That is correct.

21 Q And did you ever -- were you ever informed that the
22 Plaintiffs would be willing to accept the mediation
23 if -- if they got involved in face-to-face
24 negotiations with your clients or your client?

25 A I do not have that understanding.

1 Q Do you have any other understanding?

2 A The negotiations and discussions regarding settlement
3 were to some degree the result of a final settlement
4 conference that took place on the eve of trial, and I
5 remember Mr. Stefani having a somewhat unique
6 approach to what I would call his demand. I suppose
7 it is -- custom perhaps more than we should, but
8 normally a number is established and arguments are
9 had on why the number is not worth that much. Mr.
10 Stefani initiated a baseline for his settlement
11 demand, and indicated that he would not go below that
12 particular number, and I remember that the figures
13 that Mr. Stefani proposed would have totaled in the
14 area of \$4,000,000.00, a little bit more, and then
15 the last time we were together before trial, he made
16 us aware of the fact that he had conducted, earlier
17 in the year -- excuse me -- a mock trial, and that
18 the mock trial award had been multiple millions of
19 dollars; maybe four to five million dollars per
20 Plaintiff, and although he didn't set a specific
21 number, it was again a very, very high number --
22 four, five million dollars for the case.

23 Q Now, it appears that Mr. Stefani -- I was going to
24 say picked up our exhibits, but -- but I guess
25 they're -- they're safe. If you pick up the blue

1 book here -- the one on top and turn to the exhibit
2 which is under tab one; do you see it there?

3 A Yes.

4 Q And have you seen this letter before?

5 A I don't know. I'm not copied on it, but I would not
6 say that I have not seen it.

7 Q This is a letter by Mr. Stefani to -- written by Mr.
8 Stefani to Morley Witus, who was appellate counsel
9 for the City of Detroit when this matter was before
10 the Court of Appeals and the Supreme Court; is that
11 right, sir?

12 A Yes, it is.

13 Q And in this letter in February of 2007, a little over
14 a year ago, it appears that his total demand here is
15 \$4.3 million; do you see that?

16 A Yes.

17 Q Now, did you understand this to be the top or the
18 floor or the ceiling of negotiations that we've
19 talked about --

20 A Well, I -- I can't comment on this letter, because I
21 do not remember seeing this letter. I know how Mr.
22 Stefani would negotiate with us when we were face-to-
23 face, and the numbers that he established with us
24 were always posed to us in a baseline fashion.

25 Q Mr. Stefani just today discussed a -- the -- or

1 testified about a discussion that he had in which I
2 think he said you were involved in August, in the --
3 in his conference room -- I think he -- I think he
4 said, where you were going over exhibits for the
5 trial, and there was discussion about would you
6 engage in facilitation with no floor whatsoever; do
7 you -- did you hear that testimony --

8 A I did.

9 Q Do you recall that management?

10 A Not specifically, but I do not doubt -- I -- I
11 remember the meeting, but I don't remember the
12 facilitation suggestion coming to bear, particularly
13 the issue of a facilitation with no baseline.

14 Q And -- I think he indicated that Mr. McCargo said he
15 would get back to him and he never -- and he meaning
16 Mr. Stefani, never heard from Mr. McCargo. Do you
17 have any recollection or knowledge of any of this?

18 A I am certain, as with all discussions, it always ends
19 with a -- we'll get back to you. That -- that's all
20 I remember.

21 Q I now want to just talk briefly about the trial. You
22 participated in the trial; is that correct?

23 A I did.

24 Q And who were the trial lawyers on behalf of the
25 defendants who were active during that trial?

1 A Mr. McCargo, Valerie Colbert-Osmauede.

2 Q And you?

3 A And me.

4 Q And that trial was before Judge Callahan; started in

5 August and ended on September 11th --

6 A The last --

7 Q On September 11th of last year; is that right?

8 A That is correct.

9 Q And -- and in the course of that trial, were there

10 any settlement negotiations that you can recall?

11 A No.

12 Q Trial resulted in a verdict for the Plaintiffs

13 jointly at six and a half million dollars; am I

14 right?

15 A Yes, it did.

16 Q After that verdict, did you have any meetings with

17 your -- with the defense team or with any other

18 representatives of the Defendants or the Defendants

19 themselves about the likelihood of your success in

20 this case on appeal?

21 A Yes, we did.

22 Q When were those meetings, if you can recall?

23 A I would preface it by saying I assume, since I have

24 been asked to come before this body, that any

25 questions of attorney/client privilege are waived.

1 Since these are my clients, I'm at liberty to discuss
2 this.

3 Q On -- on behalf of -- unless I hear otherwise, I will
4 as -- as the attorney for the same group of clients
5 that you have and had, I believe we will waive
6 attorney/client privilege, and allow you to discuss
7 these discussions openly and in public; thank you.

8 A Discussions were conducted with Morley Witus, I would
9 like to say the morning following the verdict. Mr.
10 Witus was appellate counsel to the City, and had led
11 the efforts that went forth and through the Court of
12 Appeals and the Supreme Court during the two prior
13 years. Mr. McCargo and I discussed with Mr. Witus
14 the trial, the verdict. To some degree, we were
15 interviewed by him. The -- the -- the process of
16 trial attorneys meeting with appellate attorneys is a
17 somewhat different event; not just lawyers casually
18 talking. Appellate lawyers look for, think about,
19 are motivated by different things than trial lawyers,
20 and we discussed with him those things that we
21 thought might be subject to a viable appeal and/or
22 might be deemed subject to an argument that
23 reversible error had been committed. I do not know
24 or remember exactly what those things were, so I hope
25 you're not going to ask me, but we did have that

1 discussion with Mr. Witus.

2 Q Did Mr. Witus say that in order to seriously evaluate
3 the -- the potential for success on appeal, he would
4 have to review the entire transcript?

5 A Mr. -- Mr. Witus did what -- what any wise appellate
6 counsel would do. He stated that before he could
7 make a commitment or a recommendation, that he would
8 have to review the transcript. Again, appellate
9 lawyers look for different things than trial lawyers
10 do, and they would see things through a different
11 eye, and he -- he listened, he asked questions, but
12 he made it clear that before a decision or
13 recommendation could be made, the transcript would
14 have to be reviewed.

15 Q Setting that -- that caution that you just described,
16 which was expressed by Mr. Witus, aside, did he give
17 you any general impression at that moment as to the
18 likelihood of your success on appeal in this case?

19 A If you are asking me was a statement made suggesting
20 or encouraging the viability of an appeal, no. If
21 you were to ask me what did he say; his statement was
22 clear. I cannot make a recommendation until I read
23 the transcript. If you are asking me what did I
24 think as we sat there; I do not believe that he was
25 impressed by what we were suggesting to him might be

1 viable appellate issues. But again, he's an
2 appellate attorney, and he is not going to give you a
3 yes or no opinion without reading the transcript,
4 unless some egregious act has occurred. But on the
5 average routine trial, appellate counsel will say
6 wait, I have to read the transcript.

7 Q And Mr. Copeland, what did you think about your --
8 the likelihood of success on appeal at that point?

9 A You have to remember we were 24 hours post-verdict,
10 so we are still reeling from what had happened the
11 day before and still attempting to digest and process
12 what had happened the day before. Trying to gather
13 notes, think about what errors may have been
14 committed, formulate an intelligent report for
15 appellate counsel, and get a sense of where he
16 thought this matter was headed was somewhat
17 difficult, but -- I did not think that we were overly
18 impressing him with what we were talking about.

19 Q I have the -- the court, specifically Judge Colombo,
20 has now released the minutes of the closed session of
21 September 19th --

22 A Correct.

23 Q -- and I have delivered a copy to you; is that
24 correct?

25 A Yes, you have.

1 Q And you -- you've now I'm sure --
2 A I had read it.
3 Q -- have read that? So, approximately a week after
4 the verdict, a week and a day after the verdict, you
5 appeared in front of this body, the Detroit City
6 Council, along with Mr. Johnson, Mr. McCargo, Ms.
7 Osmauede, and there may have been one or two others -
8 - I don't -- there -- there were several others, and
9 -- and discussed the status of the case at that time;
10 is that correct?
11 A That is correct.
12 Q Did you express your opinion with regard to the
13 likelihood of success on appeal during that meeting?
14 A I was not questioned during that meeting.
15 Q And you did not offer any opinions?
16 A No, I did not.
17 Q In fact, I think that the record reflects you didn't
18 say anything at all.
19 A I did not.
20 Q Did you note that Mr. Johnson said that there were
21 policy reasons not to settle the case, but rather to
22 appeal the case, and that in order to settle the
23 case, it would be necessary that the Plaintiff
24 present you with, and I quote, "An awfully, awfully,
25 awfully, awfully attractive offer" unquote; do you

1 remember that?

2 A That reflects his testimony.

3 Q Did you disagree with him at the time?

4 A I did not disagree with anything John Johnson said at
5 that hearing. There was no way that, in my opinion,
6 a lawyer could make a recommendation to a client on a
7 matter as significant as this with reference to an
8 appeal until the appellate lawyer had told him yes,
9 go ahead with the appeal, or no, you do not have a
10 viable appeal. It -- it would be, in my opinion --
11 it's something that I would not do if I had been
12 giving the report.

13 Q I take it you would consider that to be poor practice
14 --

15 A I would consider it to be reckless. You -- that's
16 why you have appellate lawyers. They -- again, they
17 look for things -- they are aware of things, they are
18 attuned to things that are different than what the
19 trial lawyers are looking for. They -- when they
20 interview us, they ask us questions that even
21 sometimes we don't understand the -- the reason for
22 it. I'm sure you've been through that. You -- you
23 have been involved in situations when a case went bad
24 or when a case went well, and you become subject to
25 the appeal, and -- okay, well now you have to go and

1 sit with the appellate guys, and that's -- okay, here
2 we go. They -- they operate on a different level.

3 Q I agree.

4 A Okay.

5 Q And I've given that -- been in your shoes -- a number
6 of times. Now, let me just stop for a moment and ask
7 you this; prior to the appeal, the trial lawyers have
8 to consider making post-verdict motions; is that
9 correct?

10 A Correct.

11 Q Was there any discussion of that process at all?

12 A Correct.

13 Q And those motions would include things like a motion
14 for a new trial --

15 A Everything from a new trial to remittitur --

16 Q To a judgment notwithstanding the verdict, a
17 dismissal?

18 A Correct.

19 Q All of those possibilities; is that right?

20 A Correct.

21 Q And did you have that discussion as well?

22 A That was a continuing discussion over probably a
23 period of weeks.

24 Q Okay. And -- and that discussion was ongoing at the
25 time you appeared in front of City Council; is that

1 correct?

2 A I would say more likely than not.

3 Q All right. Now, between -- according to the notes --
4 the minutes of the closed meeting, which was
5 September the 19th, 2007, you -- on October the 17th,
6 2007, you met with the facilitator, former judge Val
7 Washington, and Plaintiffs' counsel at the law office
8 of Charfoos and Christensen; am I correct about that?

9 A You are, sir.

10 Q Here in the City of Detroit up on Woodward Avenue; is
11 that correct?

12 A Correct.

13 Q And can you -- we -- we've heard a description of
14 that meeting from Mr. Stefani. Can you give us a
15 description of that meeting from your perspective? I
16 assume it's somewhat different since you were not
17 even in the same room as he was most of the time.

18 A A facilitation -- and I hope I'm not telling you
19 something that you are well aware of, but a
20 facilitation is to some degree an effort in -- in
21 shuttle diplomacy. The parties are separated. There
22 may be some initial commingling, if you will, when
23 the facilitation initiates. The facilitator will
24 generally identify to the parties his protocol,
25 because every facilitator handles his facilitations

1 differently. The facilitator, in this case Judge
2 Washington, identified to us how he was going to do
3 things. He had control over the situation. This may
4 take anywhere from five to ten minutes, to 15 to 20
5 minutes. At the time the facilitation itself begins,
6 the parties are separated. Mr. Stefani, Mr. Rivers,
7 went to another part of the building, and we remained
8 in the courtroom.

9 Q And Mr. Rivers is Mr. Stefani's associate, so --

10 A Correct.

11 Q Go ahead. And then the -- the facilitator -- Judge
12 Washington shuttled back and forth between the two
13 rooms; is that right?

14 A Correct.

15 Q And what was it that you understood you were
16 attempting to facilitate or settle or come to
17 agreement?

18 A The attorney fee issue.

19 Q And the -- so what -- just very briefly sketch out
20 the two positions on attorneys fees between your side
21 and Mr. Stefani's side?

22 A Simply stated, Mr. Stefani was making demand for
23 \$1,000,000.00 in attorney fees. It was our posture
24 that his demand was excessive.

25 Q Did you have a counter position that you directed his

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way?

A Well, initially it's simply that we do not wish to pay \$1,000,000.00, and as the facilitation proceeds, numbers are established and you attempt to work towards a goal, and that's when the -- the shuttling, if you will, comes in. There is -- there's dead time; you -- you take breaks. It's -- it is a somewhat relaxed atmosphere.

Q At some point did you and -- your side and his side come to loggerheads on the number for the attorney's fees?

A There -- there reached a point -- I think around \$450,000.00 to \$500,000.00, where we were not making progress.

Q And at that point, was there a proposal that -- from Mr. Stefani that he would like to attempt a global settlement -- in particular, settlement of all the -- all outstanding matters in these cases?

A The initial discussion of a global settlement dealt with Officers Nelthrope, Chief Brown, and the attorney fees, and that was -- the opportunity to discuss that was declined, simply because there had been no authority granted to enter into a discussion on anything other than the attorney fees. We were there essentially under a court order, because Judge

1 Callahan, as his method of dealing with the attorney
2 fee issues, orders facilitation.

3 Q And who would have given the authority to -- to -- to
4 settle the case -- the entire case; now, I mean only
5 the Brown, Nelthrope, and attorney's fees issue?

6 A You are asking a question that I am not certain I can
7 answer. I -- it --

8 Q From your --

9 A From -- from my standpoint, and my situation was
10 never such that I ever approached Council and asked
11 for authority to settle the matter. I would assume
12 that it would come from John Johnson as to any
13 interests for the City.

14 Q So that from your perspective, the only authority you
15 would get -- either get or not get to engage in
16 settlement negotiations for more than attorney's
17 fees, would have to come from Mr. Johnson; is that
18 right, sir?

19 A That is correct.

20 Q All right. Now, once -- I take it then that -- that
21 it was Mr. Stefani and his associate who proposed the
22 quote "global settlement" unquote, and your side had
23 declined it, because you did not have the authority
24 to engage in those discussions --

25 A That is correct.

1 Q What was the next thing that happened in the course
2 of this particular afternoon?

3 A Again, there was back and forth at that time. Mr.
4 Washington -- Judge Washington came into the
5 courtroom where the defense team had gathered and
6 indicated that he wished to speak with Mr. McCargo.
7 Mr. McCargo exited the courtroom and Ms. Colbert-
8 Osmauede and I remained. He was gone I would say
9 maybe 20 to 30 minutes, and I left, or exited the
10 courtroom, to seek him out to find out what was going
11 on. Do you want me to go on?

12 Q I do. Thank you.

13 A At that -- after exiting the courtroom, it was -- it
14 was a pleasant day, so from time to time -- as I said
15 there's dead time during the course of these
16 facilitations, and so from time to time we would go
17 outside, come -- come back in. Mr. McCargo was out
18 in the parking lot, and I went out in the parking lot
19 and asked him, I'm sure with a colloquialism, the
20 status of his (inaudible). And at that time, he
21 informed me of two things. He said -- and this is as
22 close as I can remember to his exact words, he said,
23 "Stefani says he has the text messages, and he wants
24 to deal or throw in Harris."

25 Q He wants to deal or throw in Harris?

1 A I -- that he wants to deal on Harris or throw in
2 Harris.

3 Q So, let me see if I -- I think I understand, but let
4 me see if I can paraphrase what you just said. What
5 -- what Mr. McCargo said to you was first Stefani
6 claims to have the text messages.

7 A Correct.

8 Q And second, now he wants to deal and -- and in doing
9 that, he wants to throw the Harris case into the
10 deal; something like that?

11 A Correct.

12 Q And when he said he has the text messages, did you
13 understand what that meant?

14 A Not instantly. Mr. -- Mr. McCargo had a document
15 that I looked at very briefly, and it was -- we were
16 sort of in opposition to one another in terms of the
17 way he was standing. And he said this is a motion
18 that he is threatening to file asking for an increase
19 in attorney fees. And so I said okay, well, what's
20 that about. He indicated that Stefani told him, or
21 that Val Washington had told him, that he had proof
22 that the major -- that the Mayor had made statements
23 at the trial that were incorrect, and -- and again,
24 this is what became significant. It wasn't the
25 motion that became the topic of conversation, it was

1 the fact that he wanted to talk about Harris.

2 Q And why was that of significance?

3 A Again, you -- you have to appreciate what we had been
4 discussing, and what was a topic of significant
5 concern for Valerie Colbert-Osmauede; there was a
6 companion case, if you will, that was the case of
7 Walter Harris. We were not -- when I say we, this
8 particular defense team was not involved in the
9 Harris litigation. Valerie Colbert was doing that
10 one solely. But I know that she had significant
11 concerns over the status of that case, and Mr.
12 Stefani had recently filed a motion attempting to
13 reopen discovery on the Harris case. Mr. Stefani had
14 just come off of a significant victory in a similar
15 case involving the Mayor, and Ms. Colbert-Osmauede
16 was facing another trial on Mr. Harris, who had
17 testified at the Brown Nelthrope matter. There were
18 matters that she had concerns with vis-à-vis the
19 opening or the reopening of discovery, and -- and
20 this is probably the second most important thing, she
21 had recently received from Mr. Stefani a demand
22 letter for \$1.9 million dollars, and that is what
23 caused us to take note of his offer to discuss
24 Harris.

25 Q Had there been any attempts to settle the Harris case

1 prior to that time?

2 A I'm unaware of any attempts, but I'm not -- have been
3 involved in any negotiations with Harris. I just
4 know that Val -- and I said Val -- Val Colbert,
5 because we've got two Vals here; there's Judge
6 Washington, who is Val Washington, and there's Val
7 Colbert. Val Colbert was concerned because if there
8 -- and again this is surmised -- if there had been
9 negotiations on her part or with Mr. Stefani, they
10 had been unsuccessful and with his recent victory
11 over us in the Brown case, he had apparently
12 significantly increased whatever demands he had made.
13 I don't know what his demands had been, but I do know
14 that she had received a demand for \$1.9 million a
15 week or so before we were at this facilitation.

16 Q Now, this is a case that she had been handling for
17 some period of time, and that I think you had
18 indicated she was very worried about.

19 A She had -- you are worried about every case. She had
20 become increasingly concerned over this one because
21 of the outcome of Brown Nelthrope.

22 Q In terms of what steps the City had taken or she had
23 taken proactively to try and resolve this case, you
24 don't -- and by this case I mean the Harris case, you
25 have no idea, right?

1 A I don't know.

2 Q Mr. Stefani just a moment ago, or shortly -- a short
3 while ago, testified, and you heard him, that as soon
4 as he suggested a figure for the Harris case, you
5 accepted it without any negotiation whatsoever, and
6 that figure was \$400,000.00; is that a accurate
7 description of how those negotiations went?

8 A I do not remember the chronology of how the cases
9 were settled in -- in terms of numbers. I know that
10 there were concerns over interest, and I -- I
11 remember more of a discussion on how much interest
12 was due on Brown Nelthrope. Brown and Nelthrope was
13 -- was my problem, if you will. Harris was Val's
14 problem. But it was still a City case, and I was
15 listening more to what are we going to do about this
16 interest, and there's always a debate over how do you
17 compute interest on cases. And for that reason, I
18 neither agreed or disagreed with his rendition of how
19 the \$400,000.00 was arrived at.

20 Q Do you have any reason to believe that he would have
21 declined a settlement of \$400,000.00 on behalf of
22 Harris had you not been able to settle the other two
23 cases?

24 A I don't know. I don't know. I -- I know that he --
25 again, Mr. Stefani had just bested us a month ago,

1 and he was feeling very confident. Harris and Brown
2 Nelthrope were similar in flavor.

3 Q Now, going to the Harris settlement, at -- excuse me,
4 to the Brown Nelthrope settlement, after Mr. McCargo
5 said to you I've got these -- I've got this paper, he
6 wants to settle; what then happened, Mr. Copeland?

7 A This is all in -- in a matter of minutes. Val came
8 out -- Val Colbert came out of the courtroom. Came
9 into the parking lot, and she came over to us and
10 asked what's what, and that is when Sam told her
11 essentially what she told -- what he told me; that he
12 has the text messages and he is now ready to talk
13 about Harris. Val at that point -- and I -- because
14 I don't know if Mr. Stefani was out there, I don't
15 remember, but that is when the call was made to John
16 Johnson. But it was not made by Mr. McCargo, it was
17 made by Val Colbert.

18 Q And did you par -- did you listen in on that
19 telephone conversation, or did you -- do you know
20 what was said either by Val Colbert or Mr. Johnson?

21 A I -- I do not -- there was no reason for me to listen
22 in. I'm assuming that she told him that Harris had
23 now come into play, and he should get over there so
24 that we can perhaps begin to negotiate.

25 Q With regard to the text messages, did either Judge

1 Washington or Mr. McCargo ever say to you, "If these
2 are in fact the text messages, they will establish
3 that the Mayor and Ms. Beatty were lying, or could be
4 accused of perjury, or were dishonest in any respect
5 --

6 A No.

7 Q -- with regard to their testimony during the trial?"

8 A No. I -- I don't remember Judge Washington taking a
9 position on -- on -- on what they were, and in terms
10 of a statement such as the one that you just made,
11 that was never done. It was just that he's got the
12 text messages and the inference being this could be a
13 problem.

14 Q In what way did you understand that it could be a
15 problem?

16 A The issue with regard to the text messages was not
17 new. There had been a fight over the text messages
18 resulting in I believe two motions in August of 2004.
19 Mr. McCargo drafted and argued the motions secondary
20 to a request from Mr. Stefani for the text messages
21 for the months of September 2002 and I believe
22 April/May 2003. The reason for contesting this
23 message or this evidence request was based on the
24 theory of privilege and the fact that there were
25 statements that were made in or on the text messages

1 that were made under the presumption that they were
2 private and confidential. That they dealt with
3 issues relating to city government and those comments
4 that would be made by an executive with his staff
5 members in the process of running the executive
6 branch of the city government.

7 Q Now, what privilege are you referring to?

8 A The deliberative privilege.

9 Q The deliberative process privilege?

10 A Correct.

11 Q Is that right? Which in order to under -- in -- in
12 order for material to be protected by the
13 deliberative process privilege, it has to involve the
14 process of deliberation and considering strengths and
15 weaknesses about any particular decision; is that
16 your understanding, or am I wrong about that?

17 A I would not say that you are wrong, but I am not an
18 expert on the concept. That is one of the reasons I
19 did not argue, draft, or attend the motions. I know
20 that there are certain things, under certain theories
21 of the law, that require or that grant or allow
22 privilege. Peer review matters. Certain aspects
23 with reference to personnel. There are debates, law
24 school professors write articles about what can come
25 into discovery and what is not subject to discovery,

1 and I know that the exchange of ideas between the
2 executive and his staff is considered by many to be
3 protected by that privilege.

4 Q Now, in -- and I'm reading between the lines of what
5 you were saying, and I don't think that any members
6 of Council are going to be shocked by this; there was
7 some concern that in the context of frank discussions
8 between the Mayor and his staff there may have been
9 potentially negative references to others, including
10 fellow politicians, or prominent business people --
11 in these messages that could prove embarrassing; is
12 that correct?

13 A It -- it was my understanding that these were
14 comments that were made frankly, that they were
15 comments that were reflective perhaps of crisp
16 language, and --

17 Q Crisp, did you say?

18 A C-r-i-s-p.

19 Q Thank you.

20 A And that they would be the type of things that one
21 would say to one's associates that you would hope
22 would not be made public. Also, I understand that
23 there were comments that were made about everything
24 from the status of labor negotiations to security
25 issues dealing with the City. They -- they were the

1 comments that are made by a Mayor to his chief of
2 staff, and to other people who were in his office.

3 Q How did that information come to you that this would
4 be -- these -- as you've just described them were the
5 subject matters of -- of these text messages?

6 A I am not certain. I -- I -- it was communicated to
7 Mr. McCargo, and I was not part of the -- I did not
8 involve myself or I was not involved in again the
9 response to this. I knew that it was going on.

10 Q When you say it was communicated to Mr. McCargo, you
11 mean he told you that this was what he had been told;
12 is that correct?

13 A Correct.

14 Q You, yourself, never saw these messages; am I right?

15 A The text messages?

16 Q Yes.

17 A No.

18 Q So whether they were protected by this particular
19 privilege or not, the only basis you had for
20 suspecting that was what you had been told by someone
21 else; am I right about that?

22 A Correct. I -- I know it was in the motion.

23 Q I'm sorry?

24 A I know it was in the motion.

25 Q You know -- I may not have understood; did you say

1 you knew -- knew what was in the motion?

2 A I know how a motion was drafted, and I know what the

3 motion raised or alleged.

4 Q What is -- what is your understanding of what -- and

5 by the motion, you mean Mr. Stefani's motion?

6 A No, no, no. Mr. Stefani did not come in through a

7 motion. Mr. Stefani filed a request.

8 Q Oh, I -- I see. You're talking about early --

9 A And -- and Mr. McCargo responded with a motion.

10 Q I understand. I misunderstood. I -- when you said

11 the motion, I thought you meant this new --

12 A Oh, no.

13 Q -- brief that --

14 A No.

15 Q -- Mr. Stefani had --

16 A No.

17 Q Okay. You did not know what was in that, I --

18 A In his -- no, I -- no.

19 Q Now, at that point, you say that Val Osmauede or Val

20 Colbert made a call; is that correct?

21 A Correct.

22 Q Did you understand that she then had obtained

23 authority to proceed with negotiations?

24 A It was my impression that she was calling John

25 Johnson, because John Johnson was the individual who

1 could grant authority.

2 Q And did you understand that he granted such
3 authority?

4 A Did you -- as we stood there in the parking lot, my
5 sense was that John is on his way here so that we can
6 begin talking. I don't know if John told Val yes,
7 you've got authority, go ahead and start, or John
8 told Val I'm on my way, give me an update when I get
9 there.

10 Q At that moment in time, what was your view about the
11 desirability of settling the Brown Nelthrope case?

12 A With the insertion into the picture of Harris, it was
13 my opinion that settlement was and would be an
14 extremely beneficial scenario for the City.

15 Q And do you want to outline the factors you were
16 thinking that led to that conclusion?

17 A Some of it is more feel than anything that I can
18 point to that is hard evidence. Starting with the
19 initial actions after this matter was lost in court
20 by our defense team, the discussion with appellate
21 counsel, in my opinion, did not suggest to me, from
22 what I could see, and again I have to make this
23 clear, it's what I could see, it's not what I could
24 identify legalistically, but from what I could see, I
25 did not think that Morley was thrilled with what we

1 were telling him. He -- he left indicating -- he
2 left indicating that well, I'll -- I'll get back to
3 you, and we need to talk about getting the
4 transcripts, and you don't do the transcript until
5 you start the post-judgment motion process, because
6 there's a protocol that you -- that you follow, so
7 it's not just a question of well get me the
8 transcript. There are motions that have to be filed,
9 that sort of thing. So we were months away from him
10 getting the transcript. Also, there were newspaper
11 articles that had suggested that members of Council
12 felt very strongly about having this matter settled.
13 There were newspaper articles that suggested that
14 Council -- certain members felt very strongly about
15 the need to stop the bleeding, and conclude this
16 matter now. There were newspaper articles that
17 suggested that Council would not authorize paying for
18 an appeal, and there were newspaper articles that
19 suggested four -- maybe not identify who, but that
20 four members of Council wanted this case settled; did
21 not want any more money spent on lawyers; did not
22 want to undergo an appeal; that they wanted this case
23 concluded.

24 Q Let me just interrupt --

25 COUNCIL PRESIDENT COCKREL: Mr.

1 Goodman, I just need to interject. It's about 3:45,
2 and do I understand correctly that our third witness
3 has some time constraints or --

4 MR. GOODMAN: She has -- she has some
5 date constraints. You have to -- she will not be
6 available after --

7 COUNCIL MEMBER COCKREL: Can we take
8 her second?

9 MR. GOODMAN: -- today. I'm sorry?

10 COUNCIL MEMBER COCKREL: Maybe we
11 should have taken her second.

12 MR. GOODMAN: I -- I feel that would
13 be disrespectful to Mr. Copeland because he has been
14 here since nine --

15 COUNCIL MEMBER WATSON: That's right.

16 MR. GOODMAN: -- and I just didn't --
17 did not feel comfortable doing that. I appreciate
18 your -- your --

19 COUNCIL PRESIDENT COCKREL: So she's
20 got a date constraint, but no restriction as far as
21 her time for this afternoon?

22 MR. GOODMAN: I guess not.

23 COUNCIL PRESIDENT COCKREL: All right.

24 BY MR. GOODMAN:

25 Q I'm sorry; I was -- I was just about to interrupt you

1 and -- with that, I forgot what I was going to say.
2 Oh, I know what it was. The -- the fact that Council
3 said they were unwilling to pay for an appeal, you
4 understood that to mean they were unwilling -- some
5 members maybe were unwilling to pay for outside
6 counsel to handle the appeal; that -- that did not
7 exclude the possibility of the appeal being handled
8 by the Corporation Counsel's office; am I right about
9 that?

10 A I assume that they were making reference to outside
11 counsel, but the overwhelming sense that I was
12 developing from what was appearing in the papers was
13 that the Council -- more than one or two members of
14 Council wanted this matter concluded, regardless of
15 who was being considered for the appeal.

16 Q So, the factors, at least as far as you've outlined
17 them, were a sense that you may have been in --
18 standing on weak footing with regard to an appeal in
19 this case, and -- I should say with regard to a
20 settlement, or that you were standing on weak footing
21 with regard to an appeal; that Council was anxious to
22 see the case resolved and go away. And was there
23 anything else?

24 A Yes -- Mr. Stefani had demanded \$1,000,000.00. Mr. -
25 - Mr. McCargo, who I find to be as thorough a lawyer

as I have ever met, had done a dissection of Mr. Stefani's bill, and was only able to find \$100,000.00 of that \$1,000,000.00 subject to question. So, our standing in the parking lot arguing about \$1,000,000.00 is a lot different than our going into court with -- and we have to actually go and argue it, and if Sam McCargo could only find \$100,000.00 to attack, there was only \$100,000.00 to attack.

Q So, then in addition you were worried about an -- an additional slog of attorney's fees coming at you that seemed to be fairly firmly grounded?

A We could not justifiably debate the number that he was suggesting he should be paid.

Q And then in addition there was the desirability from your co-counsel, Val Colbert's perspective, of settling the Harris case and getting that thrown into the mix?

A There is the Harris case and interest is running at \$1,000.00 a day on the monies that were owed on Brown Nelthrope.

Q And I take it based upon that, you believed it was desirable at that point to settle the case?

A We had no place to go.

Q So you engaged in the settlement negotiation; am I correct about that?

1 A They began when John arrived.

2 Q And the settlement negotiation took place partly in

3 Detroit, in the offices of -- of -- or maybe

4 completely at the Charfoos and Christensen office?

5 A When numbers were -- to my recollection, the numbers

6 were agreed upon by the time we left the Charfoos

7 firm premises.

8 Q And then all that had to be done at that point was to

9 type up what you had agreed upon; is that right?

10 A The case had to be put in the form of a writing. We

11 had a tentative agreement with reference to the

12 number. I believe Val Washington was concerned about

13 seeing this matter concluded, and he urged us to get

14 some sort of a writing. There was --

15 Q Go ahead sir, I'm sorry.

16 A There were two things that led us to leave the

17 facility and go to Mr. Stefani's office. The first

18 thing -- Judge Washington's mother had died, and he

19 was leaving that afternoon for Baltimore. He had a

20 flight to catch that evening to make arrangements for

21 -- for her services. Also, there was some other

22 activity going on at the Charfoos facility, and they

23 required the space by -- 5:30 or 6:00 o'clock.

24 Q Was there -- in addition to having negotiated the

25 numbers, and it was \$8,000,000.00 Brown Nelthrope and

1 \$400,000.00 for Harris; that's correct?

2 A That is correct.

3 Q There was also some agreement that there would be --
4 some of the matters, including the text messages,
5 would be held confidentially -- confidentially and
6 there was a confidentiality agreement to protect
7 those?

8 A That is not my recollection, nor is that my
9 understanding. I have no recollection of anything
10 other than the numbers being discussed while we were
11 at the facilitation.

12 Q When was the confidentiality portions of these -- of
13 this matter discussed and agreed upon?

14 A That came to be when we went to Mr. Stefani's office,
15 and we agreed that we would meet there at 6:30. Mr.
16 Stefani had to leave to go and go -- and draft the
17 settlement agreement, and we agreed -- I -- it was
18 after 5:00 o'clock when we left Charfoos and
19 Christensen.

20 Q Was he making any notes or writing anything down as
21 you were talking at the Charfoos and Christensen
22 firm?

23 A I don't know, because we weren't together. Every --
24 everything was being done through Mr. Washington --
25 through Judge Washington. Again, this is shuttle

1 diplomacy. I don't remember speaking to Mr. Stefani,
2 other than a casual greeting again until we left, and
3 it was agreed that we would go to his office for a
4 writing.

5 Q And once you got to his office, there was a portion
6 of the agreement that related to confidentiality of
7 the text messages?

8 A That is correct.

9 Q And other material as well?

10 A That is correct.

11 Q All right. Now, I want you to turn to tab three --
12 do you have the -- that spiral book in front of you
13 here? Yes, that -- that's -- the first line reads:

14 "As a condition precedent to this agreement
15 becoming operative, the monetary terms of the
16 settlement must be approved by the various
17 parties, including the City Council and City of
18 Detroit."

19 Do you see that?

20 A Yes.

21 Q What did you understand that -- that to mean?

22 A I -- I didn't.

23 Q Did you understand the term or phrase quote, "the
24 monetary terms of the settlement" unquote, to refer
25 to the -- the money part of the settlement?

1 A The use of the term monetary clearly means the money.
2 It was my understanding that this agreement had to be
3 approved in total affirmatively by Gary Brown, Harold
4 Nelthrope, Walter Harris, the Mayor, the City, and
5 Christine Beatty.

6 Q Mr. Copeland, I have already shown you, and I -- I
7 don't know if you have a copy of this there, but I'm
8 going to hand it to you; this document entitled,
9 "Stefani Handwritten Notes" and if you want to turn
10 to the last page, there is a paragraph similar to
11 paragraph eight, but not exactly the same; do you see
12 it there?

13 A Yes, I do.

14 Q And do you see that the language that reads, "As a
15 condition precedent to this agreement becoming
16 operative, it must be approved by the parties,
17 including the City Council" and then the "it" is
18 crossed out, and inserted it says the phrase, "the
19 monetary terms of the agreement" or something like
20 that.

21 A There is a carat indicating that phrase, yes.

22 Q Do you remember this change or alteration in the
23 language of the agreement?

24 A I do not.

25 Q Was there ever any discussion about whether or not

1 the confidentiality terms of this agreement would be
2 submitted to the City Council?

3 A I do not remember a discussion about what was going
4 to go in front of Council.

5 Q Were you present when the matter was presented to
6 City Council?

7 A No.

8 Q In that spiral booklet in front of you, under tab
9 four, is something entitled, "Lawsuit Settlement
10 Memorandum, Privileged and Confidential,
11 Attorney/Client Communications"; do you see that?

12 A Yes.

13 Q Were you shown that memorandum before the settlement
14 was presented to the City Council?

15 A I do not believe so.

16 Q Were you ever told that the City Council -- that the
17 Internal Operations Committee of the City Council
18 approved -- withdrawn -- withdrew that -- forwarded
19 this settlement on to the body -- to the entire body
20 of the City Council on October 18th, the next day
21 after these meetings that you've described; were you
22 told that that happened?

23 A Was I told that Val went before Council?

24 Q Yes.

25 A I'm sure that I knew that, just as -- as a matter of

1 course.

2 Q And -- and were you told that the matter went to the
3 entire Council and that the Council approved the
4 settlement on October the 23rd, 2007?

5 A I'm sure that I was.

6 Q Were you told that the only terms of which Council
7 was advised with regard to the settlement were the
8 monetary terms, and that the confidentiality
9 provisions of these agreements were never presented
10 to Council?

11 A I don't remember a discussion one way or the other.
12 I -- in terms of telling Council about the
13 Confidentiality Agreement, not telling Council about
14 the Confidentiality Agreement; I just don't remember
15 that. And the Confidentiality Agreement to me was
16 not pivotal.

17 Q You -- are you testifying here that the
18 Confidentiality Agreement was not a material term of
19 this settlement?

20 A The Confidentiality Agreement, as I understand it,
21 was separate from what was the primary issue in this
22 case, and that was the dispute between the Mayor, the
23 City, Nelthrope, and Deputy Chief Brown.

24 Q Is it your testimony that this case would have been
25 settled by the City of Detroit without this

1 Confidentiality Agreement?

2 A It is my opinion that this case would have been,
3 should have been, and would have to have been settled
4 without the Confidentiality Agreement or the text
5 message issue.

6 Q Why is it that -- did you participate -- I want you
7 to turn again to the Settlement Agreement on -- under
8 tab three, and your signature is on that Settlement
9 Agreement; is that correct?

10 A Correct.

11 Q And you signed off on the Confidentiality Agreement;
12 is that correct?

13 A The one that's contained -- the one that is part and
14 parcel of the first one?

15 Q Yes.

16 A Yes.

17 Q And that Confidentiality Agreement contained certain
18 provisions for liquidated damages?

19 A I believe so.

20 Q How much money would be paid by a party who discloses
21 any of these matters to the -- to anyone?

22 A Correct.

23 Q Millions of dollars in the case of both Brown and
24 Nelthrope, \$400,000.00 in the case of Walter Harris?

25 A Correct.

1 Q And millions of dollars in the case of Mr. Stefani or
2 anyone else; is that right?

3 A Correct.

4 Q In other words, if any of them disclose -- they would
5 pay -- they would forfeit the entire amount of the
6 settlement that they had received?

7 A That was my understanding.

8 Q And that money would go to the City of Detroit?

9 A That was my understanding.

10 Q So this was -- could be a significant fiscal matter
11 for the City of Detroit; is that not correct, Mr.
12 Copeland?

13 A When you say could be, you mean if -- if it was
14 breached?

15 Q Yes.

16 A Yes.

17 Q In your opinion, should -- given the fact that this -
18 - City of Detroit's interests were being negotiated
19 in this Confidentiality Agreement, and that given the
20 fact that the Detroit City Council has to consent and
21 approve all settlements that are entered into on
22 behalf of the City of Detroit, should this matter of
23 liquidated damages have been brought in front of the
24 City Council?

25 A I am not routinely in front of the City Council with

1 reference to settlement memoranda. In this
2 particular case, the question of liquid -- liquidated
3 damages was one that if it arose would inure to the
4 benefit of the City. The City was not put in any
5 risk. The City would benefit if Mr. Nelthrope or
6 Chief Brown breached the agreement.

7 Q Yes.

8 A So, it -- I did -- as I stand or sit here today, I
9 did not look at that as something that required the
10 City to be -- about which the City should be warned,
11 so --

12 Q Here's my question. For example, if Nelthrope
13 breaches the agreement, he forfeits \$2,000,000.00 to
14 the City of Detroit according to this; you read that,
15 right?

16 A Yes.

17 Q Maybe \$2,000,000.00 isn't enough. Maybe the damage
18 to the City of Detroit would be greater than that,
19 and maybe it should be \$4,000,000.00. That can only
20 be decided and consented to and agreed upon by the
21 City Council; isn't that right?

22 A I suppose that you could look at it that way.

23 Q My question really is this, Mr. Copeland; you and I
24 have talked about this already --

25 A Certainly.

1 Q Why -- why did you not, as the attorney for the City
2 of Detroit, disclose -- proactively and affirmatively
3 disclose this Confidentiality Agreement to members of
4 Council, who have the Charter obligation to consent
5 to and approve all settlements that are being entered
6 into on behalf of the City of Detroit?

7 A I did not believe that this agreement, which is a
8 tentative agreement, necessitated my proactive advice
9 to the Council. I did not think it my obligation to
10 tell Val Colbert, "Make sure you advise them that
11 some of this money will have to be rebated in the
12 event they breach."

13 Q You have indicated that you did not consider it to be
14 -- that regardless of this Confidentiality Agreement,
15 this case should be settled and had to have been
16 settled at that time regardless; is that correct,
17 sir?

18 A It had to be settled, should have been settled, and I
19 believe would have been settled at some time in the
20 very immediate future, even had not those text
21 messages been introduced. I do not know if we had
22 not had that discussion on the 17th, if we had not
23 been together on the 17th, if it would have settled
24 at that time. But there was going to come a time
25 when Mr. Stefani, probably in a court hearing over

1 the attorney fees, was going to be cognizant of the
2 weaknesses of our position. Mr. Goodman, my sense --
3 again nothing that I can quote to you from statute or
4 case law -- but my sense was the appellate lawyer
5 wasn't thrilled with us. I know Council wanted this
6 case settled. When John Johnson arrived at the
7 facilitation hearing, he informed us that he had met
8 with a Council member who advised him, perhaps that
9 day, or maybe the day before, that there would be no
10 money for an appeal. We had no valid means of
11 attacking the attorney fee issue.

12 COUNCIL PRESIDENT COCKREL: Mr.
13 Goodman, could you ask Mr. Copeland to elaborate on
14 which Council member that was; if he knows?

15 THE WITNESS: It was Mr. Kenyatta.

16 COUNCIL PRESIDENT COCKREL: Thank you.

17 COUNCIL MEMBER KENYATTA: And what was
18 it that Mr. Kenyatta said again?

19 THE WITNESS: I was advised by John
20 Johnson that he met with you and that you informed
21 him that there would be no money for an appeal.

22 BY MR. GOODMAN:

23 Q And again that saying was no money for outside
24 counsel to handle the appeal; it doesn't rule -- it
25 doesn't take into account the possibility or

1 Corporation Counsel?

2 A I was at that time I'm sure not thinking about just
3 going in house; I was told that there would be no
4 money for an appeal.

5 Q Now --

6 A There was -- again, our inability to attack the
7 attorney fee issue. We've got interest running at
8 \$1,000.00 a day. We've got Harris with a \$1.9
9 million demand. The numbers, as we were totaling
10 them up, particularly when you throw in the \$1.9
11 million on Harris, were rapidly beginning to approach
12 the possibility of the cost or the exposure or the
13 risk of this matter going to a figure in excess of
14 \$10 to \$11,000,000.00, and we had no hiding places.
15 We had no place to go. We stood there negotiating
16 with Mr. Stefani with one thing in our arsenal. His
17 fear that we would appeal this matter, and have this
18 tied up for another year and a half or two years on
19 fights similar to the ones he had just completed.
20 And if we had gone to an appeal, assuming that it had
21 been authorized and been unsuccessful, we are now,
22 with interest, looking at perhaps \$13 to
23 \$15,000,000.00.

24 Q Now, Mr. Copeland, did any of your co-counsel share -
25 - explicitly share with you your view that regardless

1 of the Confidentiality Agreement, this -- case could
2 and should have been settled for the \$8.4 thereabout
3 million dollars that it was settled for, regardless
4 of the Confidentiality Agreement; did anyone else say
5 that to you?

6 A Do you mean was there agreement that the situation
7 regarding the overall impact of this case was -- I'm
8 not sure I follow you.

9 Q My question is this; was -- did anyone say to you or
10 out -- say explicitly, regardless of the existence of
11 this Confidentiality Agreement, regardless of the
12 existence of text messages, we need to settle this
13 case for this amount of money right now?

14 A I am certain that that was the consensus. In this
15 auditorium, in this atmosphere, which is focused to a
16 large degree, if not focused totally, on the text
17 messages, there is a sense that that -- that those
18 items were the driving force behind what caused this
19 matter to conclude on October 17th. That was not my
20 sense.

21 Q Eventually, this matter was -- this agreement that is
22 under tab three, Settlement Agreement, was split into
23 two separate agreements; is that a fair statement,
24 sir?

25 A Yes.

1 Q One was a -- called a Settlement Agreement and
2 Release, and it's -- I think it's under tab six or
3 seven here. Seven. And the -- and the other was a
4 Confidentiality Agreement; is that correct?

5 A Correct.

6 Q Did you have anything to do with the drafting of the
7 Confidentiality Agreement?

8 A I did not.

9 Q Did you ever see it?

10 A No.

11 Q Did you know that it was in existence; that there --
12 that this Confidentiality Agreement was being
13 drafted?

14 A Yes.

15 Q Did you understand this to be unrelated to the
16 settlement of -- the overall statement of the Brown,
17 Nelthrope, and Harris cases?

18 A It was my understanding that this was viewed as a
19 private matter, if you will, independent of the
20 underlying dispute.

21 Q Did you understand that the -- or were you ever told
22 that the reason the settlement was split in half in
23 the way we just talked about was because Freedom of
24 Information Act requests had been filed by the
25 Detroit Free Press?

1 A I was not told that.

2 Q You heard Mr. Stefani testify to that?

3 A I heard Mr. Stefani testify to that.

4 Q You heard him say that Mr. McCargo, I believe, said

5 that. I don't know if he said you were present when

6 that statement was made or not, but you don't recall

7 it; is that correct?

8 A I do not remember a discussion between Mr. Stefani

9 and Mr. McCargo on the FOIA request.

10 Q Under tab five, there is something called Notice of

11 Rejection of Proposed Settlement signed by Mayor

12 Kwame Kilpatrick, and under tab six, there's

13 something called -- and dated October 27th, 2007, and

14 under tab six, there's something called Approval of

15 Terms and Conditions of Settlement, signed by Mayor

16 Kwame Kilpatrick and dated November 1st, 2007. Do

17 you recall these documents or these pleadings being

18 filed?

19 A I'm sure that I'm aware of them.

20 Q Well, what is your understanding of the reason for

21 these two pleadings?

22 A I -- I believe that there was concern over the issue

23 regarding Mrs. Beatty. She was not a defendant, and

24 it was felt that she -- the City could not, on her

25 behalf, sign that document, and there were just

1 concerns and the documents were separated.

2 Q And why they were separated more precisely, can you

3 say? Did you draft these documents, first of all?

4 A No, I did not.

5 Q Do you -- other than what you said, do you have any

6 more insight as to the reason for the -- their

7 drafting, their timing, and their significance?

8 A I imagine any significance would be to confirm the

9 fact that they were viewed or that this was viewed as

10 a private or separate or independent matter.

11 Q That -- I don't quite understand how that relates to

12 the fact that there was a rejection.

13 A Oh, you're talking -- okay, I'm sorry; I thought you

14 were talking about the Confidentiality --

15 Q No, no --

16 A I don't know, because I was not privy to the

17 discussions that --

18 Q I'm sorry.

19 A -- that led to that.

20 Q I was not clear; I apologize.

21 A Okay.

22 Q He -- so the answer to my question is you don't

23 really know what the explanation for these two

24 pleadings is; is that correct, sir?

25 A Correct.

1 Q All right. We are short on time, and is there
2 anything else that you would like to say in addition
3 to what you've already said before Council commences
4 their questioning?

5 A Not at this time.

6 MR. GOODMAN: I want to thank you for
7 being cooperative. You and I have spoken privately
8 outside of the presence this august chamber, and --

9 THE WITNESS: Yeah.

10 MR. GOODMAN: -- and again -- as I
11 said then and as I'm saying now, I very much
12 appreciate your coming forward to testify.

13 THE WITNESS: Thank you.

14 MR. GOODMAN: Mr. President?

15 COUNCIL PRESIDENT COCKREL: Yes.

16 There -- the time is about 4:15. Do you want to
17 proceed with an initial round of questioning?

18 COUNCIL MEMBER KENYATTA: Yes.

19 COUNCIL PRESIDENT COCKREL: All right.

20 COUNCIL MEMBER WATSON: Mr. President,
21 how about one question, one minute each, so that --
22 that we can make sure we can get to our last witness?

23 COUNCIL PRESIDENT COCKREL: I think
24 one is a little too limiting; I think we should stick
25 with the four.

1 COUNCIL MEMBER COCKREL: Mr.
2 President, could -- could we get -- agreement -- Mr.
3 Copeland's agreement to return should there be
4 additional questions that can't be covered in -- in
5 one round?

6 MR. GOODMAN: Allow me to confer with
7 -- with --

8 COUNCIL PRESIDENT COCKREL: Yes.

9 MR. GOODMAN: Mr. Copeland has
10 graciously agreed to come back if we need him.

11 COUNCIL PRESIDENT COCKREL: We may
12 not. We will see. Council Member Kenyatta is first,
13 followed by Council Member Tinsley-Talabi, and then
14 Council Member Cockrel.

15 COUNCIL MEMBER KENYATTA: Thank you,
16 Mr. President.

17 Good evening, Mr. Copeland.

18 THE WITNESS: Mr. Kenyatta.

19 COUNCIL MEMBER KENYATTA: Thank you
20 very much for your presentation. The testimony has
21 been very revealing thus far. I found out today that
22 I have such great power on City Council and that --
23 by the administration. I've asked for the Mayor to
24 resign. I guess he won't be resigning. I asked
25 through a resolution, in fact this body did, through

1 resolutions, that the Mayor not appeal several cases
2 forward, and he did all of them -- appealed all of
3 them. So I guess I didn't have that much power. But
4 then you all here know that one Council member does
5 not speak for this entire body, and one Council
6 member does not determine the flow of this entire
7 body.

8 I find it very interesting that
9 through you that Mr. Johnson indicated that the
10 reason you all were out in the parking lot going
11 around in circles trying to decide which way you were
12 going is because Member Kenyatta had said that you
13 should settle this case. And of course I find that
14 ridiculous.

15 I'm very -- respectfully, I am very
16 confused at your testimony to determine what was the
17 real motive behind the settlement, because the
18 facilitation -- the -- the understanding based upon
19 the deposition of Mr. Stefani and the information
20 that we have before us, that there was some
21 discussion of a global agreement before there was an
22 impasse. And part of that global agreement include
23 Mr. Harris and a certain amount. And at a certain
24 point, there was a breakdown as to whether or not
25 there could be some agreement on that global

1 agreement, and the negotiation of that. It broke
2 down. And as a result of it breaking down -- because
3 what I heard you say is that the settlement could
4 have, should have, would have, had to be settled
5 without the Confidentiality Agreement; however, there
6 was discussion of that happening before there was an
7 impasse. So maybe they didn't know what you knew, or
8 understood what you were understanding, because it
9 didn't happen.

10 Once there was an envelope that was
11 passed to Mr. McCargo out in the parking lot -- a lot
12 happened out in the parking lot -- you then went to
13 the parking lot, Mrs. Colbert then went to the
14 parking lot, and it was revealed at some point that -
15 - based on your testimony that Harris was now in the
16 global agreement again, even though he had been in it
17 before, but now Harris -- we're led to believe, based
18 upon what I'm hearing, that it was because of Harris
19 -- that was now Harris was in this thing, now we can
20 settle. Even though the text messages was there,
21 that really wasn't the issue. But oh, maybe it was
22 the Council; the Council really want you to settle
23 this thing, and so that's why everybody was confused
24 out in the parking lot, because it -- it was a
25 question of Council wanting a settlement, and now

1 that Harris is in it, or was it really the fact that
2 oh, I didn't know? I didn't know what; that Harris
3 was it in? Because this is the testimony that we
4 have based upon Mr. Stefani's deposition, that Mr.
5 McCargo said I no idea. He had no idea that he was
6 throwing in Harris; he had no idea that Council
7 wanted a settlement; or I had no idea that these text
8 messages are here and revealing all of this stuff
9 here. Get Mr. Johnson on the phone; get the Mayor
10 and let's deal with it.

11 What is your real understanding -- not
12 your thoughts or what should have been done based
13 upon the -- the appellate attorney, but based upon
14 you all standing in that parking lot on that nice
15 day, everybody in the parking lot. Based upon that
16 discussion, was it Harris, was it Member Kenyatta, or
17 was it oh, I had no idea?

18 THE WITNESS: May I respond?

19 COUNCIL MEMBER KENYATTA: Yes.

20 THE WITNESS: First, as I am sure you
21 are aware, in reverse order, at page 133 of his
22 deposition, Mr. Stefani testified that it was his
23 opinion that the separate agreement was in fact
24 independent of the underlying dispute. With
25 reference to the global issue, using the term global,

1 there were two global opportunities.

2 Councilperson Kenyatta, when I
3 responded initially to Mr. Goodman's inquiry, I made
4 specific reference to the fact that this was an
5 initial or this was a first global discussion; the
6 first global discussion being limited to Brown,
7 Nelthrope, and the attorney fees. We were there for
8 attorney fees. We were not there to discuss Brown/
9 Nelthrope. Mr. Stefani raised the opportunity --
10 discussed the opportunity or the possibility of a
11 global settlement because of prior dealings with Ms.
12 Osmauede on another lawsuit. When that initial
13 global discussion came up, global made reference to
14 Brown/Nelthrope, attorney fees period. Harris was
15 not discussed. When Harris came into the picture,
16 after there was an impasse, that became our second
17 global opportunity. Because now we are talking
18 Brown/Nelthrope, attorney fees, and Harris.

19 I apologize if I was not clear with
20 regards to which global I was making reference to.
21 But Mr. Goodman, I know remembers our having this
22 discussion, and I made it clear to him that there was
23 two global opportunities; the first of which was
24 rejected.

25 In terms of what did I think needed to

1 be done? I clearly think that what needed to be done
2 that which was done. Was it Council asking for the
3 settlement? No. Was it you, I am told, advising the
4 Corporation Counsel that there would be no money for
5 an appeal? No. Was it the body language, if you
6 will, of the appellate attorney? No. Was it Sam
7 McCargo's inability to attack more than -- or less
8 than \$100,000.00, but certainly no more than
9 \$100,000.00 on the attorney fees? No. Was it
10 Harris, which proved or at least which gave the
11 impression of being as dangerous a scenario as Brown
12 and Nelthrope? No. But there is, Councilperson, a
13 sense of synergism here. A crescendo effect took
14 place. On that day, in light of what we faced; in
15 light of what we did not have; in light of our
16 ability to continue to defend the City with viable,
17 rational, legal arguments, that crescendo of events
18 mandated the settlement of that case. If that
19 discussion had come up ten days before, would we have
20 said yes, settle it -- but when you look at
21 everything -- you can't look at it from this room,
22 you've got to go back to the 30 days that followed
23 that trial, and look at everything and their
24 cascading effect; the case had to be settled.

25 COUNCIL MEMBER KENYATTA: Thank you.

1 I didn't get my answer, but --

2 THE WITNESS: I apologize, because --

3 COUNCIL MEMBER KENYATTA: -- thank you

4 anyway for the answer that you gave.

5 THE WITNESS: I will -- no -- I will

6 answer any question that you pose to me.

7 COUNCIL MEMBER KENYATTA: I'm going to

8 the next question.

9 THE WITNESS: If that did not

10 accurately --

11 COUNCIL PRESIDENT COCKREL: Mr.

12 Copeland? Mr. Copeland, Mr. Kenyatta has the floor,

13 so he --

14 COUNCIL MEMBER KENYATTA: I'm going to

15 the next question.

16 THE WITNESS: I'm sorry.

17 COUNCIL MEMBER KENYATTA: In your --

18 from your knowledge, who hired you and for what?

19 THE WITNESS: I was retained through

20 the City Law Department to represent the interests of

21 the City.

22 COUNCIL MEMBER KENYATTA: And to the

23 best of your knowledge, what is the City of Detroit?

24 Who is the City of Detroit?

25 THE WITNESS: Mr. Kenyatta --

1 Councilperson Kenyatta, you are asking a question
2 that could be answered ten different ways.

3 COUNCIL MEMBER KENYATTA: Well --

4 THE WITNESS: It is --

5 COUNCIL MEMBER KENYATTA: I guess what
6 I'm saying --

7 THE WITNESS: -- a geographical area;
8 it is a political reference point on the map of Wayne
9 County.

10 COUNCIL MEMBER KENYATTA: I said who.

11 THE WITNESS: It's the 950,000 people
12 that live here. It is an entity that is represented
13 by the nine of you. It is a great city where they
14 build automobiles. It is a community that rests upon
15 a strait known as the Detroit River. I can't answer
16 to you what the City is. I was representing the
17 950,000 people that live here.

18 COUNCIL MEMBER KENYATTA: And they
19 were your clients?

20 THE WITNESS: That is how I viewed it.

21 COUNCIL MEMBER KENYATTA: Based on
22 your scope of service, attorneys shall act for and
23 assist the City's Law Department by providing legal
24 representation to Kwame Kilpatrick, Mayor of the City
25 of Detroit, in the matters of Deputy Chief Gary Brown

1 and police officer Harold C. Nelthrope, and Jerry A.
2 Oliver, and it goes on also to say the City of
3 Detroit and the Wayne County Circuit Court. So, you
4 understand that the Mayor had private attorneys, as
5 well as public attorneys. It is clear that there was
6 a difference between Mayor Kwame Kilpatrick and City
7 of Detroit. When you sat down here today, you asked
8 for attorney/client privilege to -- or to waive
9 attorney/client privilege because we were your
10 clients. I guess my question is, is your
11 understanding that this body, not the geographical
12 area -- area, not the nine hundred and some thousand
13 people, but this -- this body that you said you
14 wanted permission to waive, that this body is in fact
15 were your clients at that particular point in time?
16 Is it then to the best of your understanding that you
17 represented, on behalf of your clients, this body
18 sitting here; you represented that body to the best
19 of your ability and made sure that they were
20 knowledgeable of everything that was in their best
21 interests that took place on that day -- on the 17th
22 of October and beyond, that you represented us to the
23 fullest of your extent. That we had knowledge and
24 that we were acting -- that when we acted on this
25 agreement -- confidential, settlement, all of this,

1 that we were acting with the knowledge and all of the
2 information given to us by your and other's
3 representation; is that your understanding?

4 THE WITNESS: In terms of what placed
5 this City at risk; in terms of the liabilities that
6 you faced, my answer is yes.

7 COUNCIL MEMBER KENYATTA: Okay. Thank
8 you, Mr. -- I'll not ask my fourth question.

9 COUNCIL PRESIDENT COCKREL: Council
10 Member Tinsley-Talabi.

11 COUNCIL MEMBER TINSLEY-TALABI: Thank
12 you very much, Mr. President.

13 THE WITNESS: Good afternoon,
14 Councilperson.

15 COUNCIL MEMBER TINSLEY-TALABI:
16 (Inaudible) City in this matter. Can you tell me
17 (inaudible) Nelthrope case?

18 THE WITNESS: I had no contact with
19 Council from the time we were retained.

20 COUNCIL MEMBER TINSLEY-TALABI: But --
21 okay, but you did (inaudible) also?

22 THE WITNESS: Yes. Well, I -- I would
23 answer that by saying you are the representative --
24 the legislative body of the client.

25 COUNCIL MEMBER TINSLEY-TALABI: -- we

1 are equal branches of government; the administration,
2 the Mayor, and the Council, they're equal branches?

3 THE WITNESS: Yes.

4 COUNCIL MEMBER TINSLEY-TALABI: Okay.
5 On October 17th, you signed a confidential agreement
6 on behalf of the City of Detroit. Can you tell me
7 why you thought this agreement was in the best
8 interests of your client, including the City of --
9 including City Council?

10 THE WITNESS: Because I felt that the
11 numbers that had -- upon which we had agreed, of \$8.4
12 million, was never going to lessen. I felt that the
13 number of \$8.4 million was the best settlement figure
14 that we could reach in light of everything that we
15 faced. I felt that with \$1,000.00 a day in interest
16 running, that that number reflected what was best for
17 the City.

18 COUNCIL MEMBER TINSLEY-TALABI: --
19 early on how adamant the Mayor was in terms him not
20 wanting to settle -- appeal this under no
21 circumstances and on and on an on; do you recall
22 that?

23 THE WITNESS: I'm aware of statements
24 made by the Mayor.

25 COUNCIL MEMBER TINSLEY-TALABI: So, at

1 any -- at any time after October 17th, did you or any
2 of the attorneys for the City discuss whether or not
3 the Detroit City Council, your client, should be made
4 aware of the confidential settlement agreement?

5 THE WITNESS: No.

6 COUNCIL MEMBER TINSLEY-TALABI: Thank
7 you.

8 COUNCIL PRESIDENT COCKREL: Council
9 Member Cockrel is next, followed by Council Member
10 Watson.

11 COUNCIL MEMBER COCKREL: Thank you. I
12 first want to indicate is that as one-ninth of your
13 collective client, I do not feel well represented in
14 this matter by you, Mr. Copeland.

15 First question; in the September 23rd
16 -- September 19th rather session -- closed session,
17 which you indicate -- had no comment whatsoever;
18 today you indicated that you met with Mr. Witus and
19 all these other matters. Why didn't you advise
20 Council in some manner, way, shape, or form in that
21 meeting or subsequent to whenever it is you arrived
22 at this sense that Mr. Witus and others didn't think
23 there was much of a case here to appeal; why did you
24 not feel it your responsibility, as our counsel, to
25 advise us that in spite of -- characterize it as the

1 mad hatter tea party conversation we had on the 19th,
2 that you had concerns about the appellate stance of
3 the City in this matter?

4 THE WITNESS: Councilperson Cockrel,
5 if you were to ask me for the evidence that our
6 lawyer gave us that this case should be settled, or
7 in the alternative, should be fought through the
8 appellate courts over a two to three year period, I
9 could not give you any.

10 Mr. Witus --

11 COUNCIL MEMBER COCKREL: I'm asking,
12 sir, based on your 34 years of experience, why didn't
13 you -- because what your gut told you, why didn't you
14 come to this -- your client and say I got a problem -
15 - I think there's a problem here; you all need to be
16 aware our appellate stance isn't that great?

17 MR. GOODMAN: Mr. President?

18 COUNCIL PRESIDENT COCKREL: Yes?

19 MR. GOODMAN: I would appreciate that
20 the witness be allowed to answer --

21 COUNCIL MEMBER COCKREL: Well, I would
22 like an answer that was responsive.

23 MR. GOODMAN: Well, I -- I think that
24 may be a follow-up, but I think that he was in the
25 middle of an answer --

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COUNCIL PRESIDENT COCKREL:

(Inaudible)

THE WITNESS: Councilperson Cockrel, when I began my response to that initial inquiry, several questions ago, I told you that much of my sense of Mr. Witus's response was based on feel. I cannot tell -- I can't tell you now what he thinks or what he thought. You require evidence. In terms of evidence, I have to go on what the lawyer is telling me with reference to the viability of an appeal, and we asked him what do you think, where is this going to go, and he said I cannot tell you until I read the transcript. That is what appellate lawyers do.

COUNCIL MEMBER COCKREL: Sir, for the record, I consider your answer non-responsive (inaudible) would you withhold from your clients information about the potential rebate of millions of dollars to your client -- so-called confidentiality agreement. Would this be your practice as a lawyer, to withhold that information from your clients?

THE WITNESS: If I thought that that settlement agreement was germane to the settlement of this case; if I thought that that settlement agreement was part and parcel of the underlying dispute; if I thought that that confidential

1 settlement agreement was not something that was
2 viewed as an entity that was reflective of concerns
3 of Ms. Beatty, the Mayor, Deputy Chief Brown, and
4 Officer Nelthrope, my answer would be yes.

5 The City's case did not settle because
6 of text messages, or because of medical records, or
7 because of a confidential agreement.

8 COUNCIL MEMBER COCKREL: So, final
9 question; it's your testimony that there was no
10 concern whatsoever on your part the text messages
11 indicated that the Mayor may have perjured himself in
12 -- in a court of law relative to the settlement of
13 this case, none whatsoever?

14 THE WITNESS: I never saw -- have not
15 seen the text messages. I still don't know.

16 COUNCIL MEMBER COCKREL: I must say I
17 find your responses unresponsive -- very
18 disappointed. Thank you, Mr. President.

19 COUNCIL PRESIDENT COCKREL: You're
20 welcome. Council Member Watson.

21 COUNCIL MEMBER WATSON: Thank you, Mr.
22 President. Thank you for being here.

23 I have reviewed under tab 17, an
24 interim bill you submitted in the -- under the
25 letterhead of your firm, indicating that the City of

1 Detroit or at least the City Law Department -- the
2 City of Detroit apparently, owes you some \$104,983.26
3 as of November 29th of 2007, and my question is, is
4 that the total amount that you represent was due and
5 if not, what is the total amount -- contract
6 agreement paid -- or otherwise? What is the total
7 amount of money you expect to receive or have
8 received from the City of Detroit?

9 THE WITNESS: I believe the number
10 that I have seen is \$179,000.00.

11 COUNCIL MEMBER WATSON: Since 2004?

12 THE WITNESS: Yes.

13 COUNCIL MEMBER WATSON: Based upon
14 your involvement in the case, was there any point in
15 which you felt that you ceased to represent the City
16 of Detroit as a municipal corporation, and --
17 representing individuals who were being (inaudible)
18 that were not done in the furtherance of the City?

19 THE WITNESS: No.

20 COUNCIL MEMBER WATSON: It was your
21 contention that you have fully represented the City
22 and only the City in carrying out the \$179,000.00
23 worth of costs?

24 THE WITNESS: It is my belief that the
25 efforts that were expended by me were always done

1 with the focus of what was in the best interests of
2 the City. Initially to attempt to win the case, and
3 when that effort proved unsuccessful, to extricate
4 the City for as small or low a figure as possible.

5 COUNCIL MEMBER WATSON: Has your
6 contact ended or is it still ongoing?

7 THE WITNESS: I --

8 COUNCIL MEMBER WATSON: Has there been
9 a cessation of your formal work with the contract
10 that you were assigned by the Law Department, or --
11 or are you still engaged in billable hours?

12 THE WITNESS: I don't know that the
13 contract has expired.

14 COUNCIL MEMBER TINSLEY-TALABI:
15 (Inaudible)

16 COUNCIL MEMBER WATSON: He has -- he
17 understands my question. Yes or no, is the contract
18 still in force and -- yes or no?

19 THE WITNESS: I don't know if the
20 contract is still in force. Am I -- am I logging
21 hours? Yes. Have I billed them? No.

22 COUNCIL MEMBER WATSON: But you could
23 be --

24 THE WITNESS: I don't know. I don't
25 know if I can bill or not. But I have been keeping

1 track of the time that I have spent --

2 COUNCIL MEMBER WATSON: Do you plan to
3 bill (inaudible).

4 THE WITNESS: I do not know, because I
5 don't know if this would be considered billable time.

6 COUNCIL MEMBER WATSON: (Inaudible)
7 I'm looking at another part of your bill, an invoice,
8 it has about 15 lines drawn through the
9 specifications of what the City is paying for; the
10 City includes -- City Council (inaudible) branches of
11 government, so if in fact an invoice is submitted at
12 some point, or has been submitted at some point by
13 your firm (inaudible) approval would come from the
14 Detroit City Council, and the invoice that we're
15 holding in this -- documents has many of the
16 specificities on items redacted.

17 MR. GOODMAN: Mr. President --

18 COUNCIL MEMBER WATSON: So, as clients
19 -- as clients, we have a right to see the fullness of
20 invoices that represent payment for services
21 rendered.

22 MR. GOODMAN: Member Watson, if I
23 could just clarify. This is not -- these redactions
24 I believe were made by the City Law Department in
25 response to a Freedom of Information Act request by

1 the Detroit News. I don't --

2 COUNCIL MEMBER WATSON: Okay.

3 MR. GOODMAN: So, just keeping that in

4 mind --

5 COUNCIL MEMBER WATSON: I appreciate

6 that. So, is the Law Department (inaudible) we -- we

7 need to get the fullness of this from the Law

8 Department. Can you tell me --

9 COUNCIL PRESIDENT COCKREL: Okay.

10 Council Member, you're at four -- you --

11 COUNCIL MEMBER WATSON: Oh, okay.

12 COUNCIL PRESIDENT COCKREL: You're

13 done with four questions now.

14 COUNCIL MEMBER WATSON: I thank you,

15 Mr. President.

16 COUNCIL PRESIDENT COCKREL: All right.

17 I'm -- I'm next, followed by Council President Pro

18 Tem.

19 Mr. Copeland, it's my understanding

20 that you were the one who was chiefly responsible for

21 the researching of the terms of the safety deposit

22 box?

23 THE WITNESS: Correct.

24 COUNCIL PRESIDENT COCKREL: And what

25 would be housed there. What is your understanding of

1 exactly what was to be housed in that safety deposit
2 box?

3 THE WITNESS: The documents that
4 related to Officer Nelthrope, the documents that were
5 related to Chief Beatty, the documents that were
6 related to -- I believe Ms. Beatty's banking history
7 and the text message disks.

8 COUNCIL PRESIDENT COCKREL: That's it?

9 THE WITNESS: I believe so.

10 COUNCIL PRESIDENT COCKREL: Here's my
11 follow-up question. What is your understanding of
12 why the existence of those documents and the fact
13 that they were to be housed in that safety deposit
14 box was kept away from the City Council; what is your
15 understanding of why Council was not told about this?

16 THE WITNESS: Again, Councilperson, it
17 -- it wasn't a question of not telling Council. It
18 wasn't a question of sequestering information from
19 counsel. The posture, the thinking, the belief was
20 that this was a separate agreement. That was what
21 was testified by Mr. Stefani; it is what was believed
22 by me. Because of what has been going on, the belief
23 that this was driven by the messages and Mr.
24 Stefani's motion is almost overwhelming. To the
25 lawyers who were standing out there that day, either

1 in the parking lot, or in the courtroom, the issue of
2 the text messages was not pivotal, and in terms of
3 keeping something secret from Council, there was no
4 effort -- there was no need to keep it a secret. In
5 terms, Mr. Council President, of my attempting to
6 keep something secret from you, in terms of my doing
7 something that was inappropriate, if I viewed it as
8 being inappropriate or unjustified, why would I
9 document it? I wasn't trying to keep it a secret. I
10 put it in my bill. So I wasn't trying to hide it
11 from you. These documents did not require the
12 signature of the Council. They required and
13 necessitated the signature of Mayor Kilpatrick, Ms.
14 Beatty, and the two Plaintiffs. And our thinking in
15 October and November was let us get this case
16 settled. Let us bring this to an end. And in terms
17 of exchanging documents, let that take place as well.
18 But there was no effort to hide it from you.

19 COUNCIL PRESIDENT COCKREL: Earlier in
20 your testimony, and in response to questions from
21 Attorney Goodman, there was an issue raised about
22 attorney/client privilege, and you specifically used
23 the phrase, "Well, I consider you my clients,
24 therefore it is appropriate to waive the privilege."
25 If indeed we are your clients, you saw no issue and

1 didn't see it as being inappropriate or unethical to
2 not tell your clients about the existence of critical
3 information that was relevant to this case and to the
4 settlement?

5 THE WITNESS: Councilperson -- Mr.
6 Council President, the existence of the text
7 messages, whatever they might have said, was not
8 again pivotal, nor was it a revelation. What might
9 have been a surprise to us was the fact that Mr.
10 Stefani had them, but this was nothing new. We did
11 not know -- I did not know what they said, but it had
12 been argued three years before that what they did say
13 was highly confidential and should not be released.

14 If you'll review the transcript from
15 the motion in 2004, you'll see that Mr. McCargo
16 volunteered the text messages to the court. It was
17 his suggestion that the court review the text
18 messages once they came into his possession.

19 COUNCIL PRESIDENT COCKREL: Last
20 question. If indeed those documents were a separate
21 private agreement, did it ever occur to you that
22 perhaps the bill should be footed not by the City of
23 Detroit, but by the Mayor and by Ms. Beatty, since it
24 was a separate private agreement?

25 THE WITNESS: The bill for bringing

1 this matter to conclusion I don't believe contains
2 anything with reference to our participation in
3 drafting or creating the Confidentiality --
4 Confidentiality Agreement, because we didn't
5 participate in the drafting or the preparation of it.

6 COUNCIL PRESIDENT COCKREL: That could
7 prompt a whole line of questioning for me, but I'm at
8 four, so I'm going to stop.

9 President Pro Tem is next.

10 COUNCIL PRESIDENT PRO TEM CONYERS:
11 Thank you, Mr. President.

12 I -- I'm just kind of curious as to
13 why you didn't think that you had to tell us about
14 the confidential agreement or you should tell --
15 remind Ms. Osmauede that she should have told us.

16 THE WITNESS: Again, Councilperson
17 Conyers, at the time this matter was being brought to
18 conclusion, our focus was not on the text messages or
19 the documents that were part and parcel of the
20 Confidentiality Agreement.

21 COUNCIL PRESIDENT PRO TEM CONYERS: Do
22 you view the Confidentiality Agreement as -- as
23 private?

24 THE WITNESS: I view it as an
25 arrangement between the four signatories to it to

1 exchange documents that were generated as a result of
2 this lawsuit. I do not view it as anything that
3 reflects pivotal issues or official documents from
4 this case.

5 COUNCIL PRESIDENT PRO TEM CONYERS: Is
6 that because you think that you didn't represent us
7 as a body, and that you only represented the City of
8 Detroit, as you stated, and the Mayor and Ms. Beatty
9 and the police chief, but not Council in general, who
10 was elected to represent all the citizens in the City
11 of Detroit?

12 THE WITNESS: The absence of
13 communication to Council was in no way thought,
14 meant, determined, or intended to be a withholding of
15 vital evidence, a willful depriving of data or
16 information that was relevant to this case.

17 COUNCIL PRESIDENT PRO TEM CONYERS:
18 So, do you --

19 THE WITNESS: In no -- it was never
20 our intention to demonstrate disregard or disrespect
21 for this body. When initially signed, it was a
22 tentative agreement. It had absolutely no impact or
23 effect if it wasn't agreed to by everybody. When it
24 was revised by Mr. McCargo and --

25 COUNCIL PRESIDENT PRO TEM CONYERS:

1 Mr. Stefani --

2 THE WITNESS: -- Mr. Stefani, it was
3 at that point related only to the two of them. I
4 imagine that if everyone had approved it, a copy of
5 it would have come to you in a matter of course. I
6 never appeared before you, but it -- the settlement
7 agreement -- the tentative settlement agreement had
8 to be approved by everyone. It was not approved by
9 everyone. It was divided. Upon that division, the
10 intention to view the documents as private documents
11 became clear. And again, the settlement was not
12 dependent upon what was contained in the
13 Confidentiality Agreement.

14 COUNCIL PRESIDENT PRO TEM CONYERS: So
15 do you think that this Confidentiality Agreement cost
16 the City anything?

17 THE WITNESS: No, I don't see how it
18 could have.

19 COUNCIL PRESIDENT PRO TEM CONYERS:
20 You don't see that because of this Confidentiality
21 Agreement, that we -- the City of Detroit, the
22 taxpayers here in the City of Detroit, paid more
23 money than what this actually was -- I don't think
24 either of those clients probably made that much being
25 police officers in a lifetime. So you think that we

1 didn't -- that was -- we -- they deserved to get that
2 much money from the city? I don't -- I don't
3 disagree that they deserve something, but I disagree
4 that they deserve that much money, and but for this
5 Confidentiality Agreement and hiding of things from
6 this body, we may not have agreed to pay this much,
7 or because there was something that they were try --
8 or allegedly something trying to be hidden, we were
9 bamboozled as Council Member Watson says --

10 COUNCIL MEMBER WATSON: (Inaudible)

11 COUNCIL PRESIDENT PRO TEM CONYERS: I
12 said as you said -- I'm not saying you were; some
13 Council members were bamboozled into paying --
14 agreeing to pay for something because they were --
15 you don't think that cost us anything?

16 THE WITNESS: Councilperson Conyers, I
17 do not know how disclosure of an agreement between
18 these four individuals --

19 COUNCIL PRESIDENT PRO TEM CONYERS:
20 But you keep leaving us out, Mr. Copeland.

21 THE WITNESS: -- to ex -- to exchange
22 documents, would have caused this settlement figure
23 to decrease.

24 COUNCIL PRESIDENT PRO TEM CONYERS:
25 But you keep leaving us, the City of Detroit, out.

1 There was no one who signed this agreement that
2 represented us, the people of the City of Detroit. I
3 thought that's what we hired you to do, and you
4 didn't do that by coming and talking to us. Nowhere
5 did you ever come and talk to us.

6 Thank you, Mr. President. That was my
7 fourth question.

8 COUNCIL PRESIDENT COCKREL: Council
9 Member Jones.

10 COUNCIL MEMBER JONES: Thank you.
11 Good afternoon.

12 THE WITNESS: Good afternoon.

13 COUNCIL MEMBER JONES: You said you
14 represented the City.

15 THE WITNESS: Correct.

16 COUNCIL MEMBER JONES: Which includes
17 the City Council.

18 THE WITNESS: Correct.

19 COUNCIL MEMBER JONES: At no point in
20 time did you come to this Council and talk to this
21 Council. You -- you met with Council in closed
22 session, which (inaudible) however, you had no
23 statement (inaudible). Do you feel that you made the
24 Council -- the City Council in representing the City
25 the same representation that you gave the Mayor?

1 THE WITNESS: I don't believe that I
2 provided, in the sense I believe that you are
3 suggesting, representation to the Mayor. I think
4 that the Mayor is in many situations arguably
5 indivisible from the City, but my appearance was --
6 was filed on behalf of the City. I -- I don't know
7 if I'm answering that to your -- to your
8 satisfaction, but when we were engaged in pretrial
9 activity, when we were engaged in the trial, when we
10 were engaged in post-trial activities, my obligation
11 is to the City. I have concern over anything that
12 negatively impacts the Mayor or any other agent or
13 employee of the City, because ultimately it is the
14 City who pays.

15 COUNCIL MEMBER JONES: Well, let me
16 ask the question then. Did you at any point in time
17 have communication with the Mayor?

18 THE WITNESS: Did I talk to the Mayor?

19 COUNCIL MEMBER JONES: Yes.

20 THE WITNESS: Yes.

21 COUNCIL MEMBER JONES: Okay. Did you
22 at any point in time have communication with the City
23 -- City Council? Did you talk to the City Council at
24 any point in time?

25 THE WITNESS: No.

1 COUNCIL MEMBER JONES: Did you not
2 deem it necessary with any information that you heard
3 or you did not hear told to the City Council
4 necessary to be told to City Council, such as the
5 fact that text messages existed; such as there was a
6 Confidentiality Agreement -- did you deem that not
7 necessary for the City Council to know?

8 THE WITNESS: No.

9 COUNCIL MEMBER JONES: You didn't
10 think it was necessary that the City Council knew
11 about that -- any of that information?

12 THE WITNESS: The -- that -- the text
13 messages were suggested by Mr. Stefani on the 17th,
14 was the first time that we became aware of the
15 possibility of his having them. There is no hard
16 evidence as we are out there on the 17th, that he has
17 anything. He's got a pleading that I don't even know
18 if it's signed. It isn't filed. We -- if we talked
19 about it, there was even some question over well, you
20 know, is this -- is this sword-rattling on his part.
21 If he had what he said he had, I do not understand to
22 some degree why he doesn't file. If the possibility
23 exists that he can increase to a greater number the
24 several million dollars that he is already claiming,
25 file it.

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COUNCIL MEMBER JONES: Well --

THE WITNESS: And that -- and -- and --
- excuse me --

COUNCIL MEMBER JONES: With that question, isn't it a known fact that there was an impact between the two, Stefani and -- and the City, in trying to negotiate, as you say (inaudible) and Mr. McCargo went out in the parking lot and you went out in the parking lot and found Mr. McCargo; he decided that we need to settle and he made phone calls to whomever, and if that's what's going on in your head, then why didn't you indicate to that your partner, Mr. McCargo? Why (inaudible) so at this point now, he has this, what does that mean, it means nothing, let him file it. Why didn't you indicate that to Mr. McCargo?

THE WITNESS: Again, the atmosphere created is one that the text messages forged the settlement. The text messages did not forge the settlement. This case would have been settled or recommendations would have been made for settlement if the text message issue had never arisen. What caused the discussion to begin was the door being opened by Mr. Stefani to put Harris on the table.

COUNCIL PRESIDENT COCKREL: You're at

1 four questions, Council Member Jones.

2 Council Member Kenyatta, back to you,
3 and then Council Member Collins.

4 COUNCIL MEMBER KENYATTA: Thank you.
5 Thank you, Mr. Chair. I'm going to just ask these
6 and wrap it up.

7 I guess we're -- again, we're led to
8 believe that the text messages that the Mayor fought
9 so hard to keep from coming out and that the envelope
10 that Mr. Stefani had, it could have just had it in
11 it. We're going to include Mr. Harris and every --
12 nobody would have been bewildered out in the parking
13 lot; they would have been jumping for joy that he
14 sent the envelope, and I don't even know he would
15 have bothered sending an envelope saying I'm going to
16 file a motion to include Mr. Harris into this deal.
17 The reality is that the motion was that I have the
18 text messages and that I have proof that the Mayor
19 perjured himself on the stand, and I'm going to file
20 this motion.

21 To me, I'm sure everybody in this room
22 is clear that that is what was in the envelope, not
23 the name -- let's include Mr. Harris, and that that
24 was not the motivation to call the Mayor, wherever he
25 was in the world, "Oh, Mr. Mayor, they're going to

1 include Harris. Let's get Johnson down here. Let's
2 -- let's get everybody down here. Let's call
3 Kenyatta up and get his approval. They gonna include
4 Mr. Harris." That is what we're led to believe here,
5 and I -- I think it's totally ridiculous.

6 Finally, let me just say this; Mr.
7 President asked a question and others, that if this
8 was a separate, private agreement between the Mayor,
9 Ms. Beatty, and Mr. Mitchell, Mr. McCargo, whomever
10 else, and -- and the -- I'm sorry, Harris and -- and
11 Nelthrope, that this was a private agreement, and you
12 said, "Well, I didn't hide anything. I've got it
13 right here in my -- in my invoice" -- you got this
14 private agreement between folks outside the City, is
15 what you're saying, because this is an agreement -- a
16 confidentiality agreement between folks outside the
17 City; has nothing to do with the City. But you
18 didn't bill them. You didn't bill them on 10/18/2007
19 letter to Plaintiff attorneys requesting security
20 safety deposit box with carbon copy to attorney
21 Colbert and -- and Mr. McCargo. You didn't bill them
22 for a conference with Kisha -- Akisha Johnson
23 regarding document storage. You didn't bill them on
24 October the 22nd for a telephone conference with
25 attorney Sam McCargo regarding information obtained

1 from financial institution -- the financial
2 institution that was going to house the safety
3 deposit box and then additional -- to Chase Bank and
4 Comerica find out -- find out which bank you were
5 going to put these separate, private, outside of the
6 City documents, that had nothing to do with the City.
7 You didn't bill them for the 10/20 -- 10/23rd, 2007,
8 multiple telephone conferences with the banking staff
9 regarding safety deposit box, and multiple e-mail
10 conferences with attorney McCargo regarding the
11 safety deposit box. It is your testimony, I didn't
12 bother telling Council about that, because this was a
13 private, separate, outside of the City's domain
14 agreement, no problems with it, because it was a
15 confidentiality agreement, but if it was a
16 confidentiality agreement that included text
17 messages, how somebody got their mortgage through
18 Fifth Third -- Third Fifth Bank, whatever, and
19 medical information, all of that, it was all their
20 business, is what you're saying to us; this was their
21 business Council, you had nothing to do with it, you
22 have no business in it, but you can pay me for it.
23 Is that --

24 THE WITNESS: May I respond?

25 COUNCIL MEMBER KENYATTA: -- that's

1 basically what this amounts to, correct?

2 THE WITNESS: That is the twist that
3 you choose to put on it. If this settlement had
4 broken down; if this settlement had collapsed and the
5 numbers had gone up, I arguably would be here
6 answering questions on why didn't we do everything we
7 could to put this case to rest once the opportunity
8 to get rid of not only this case, but a very
9 troublesome case, presented itself.

10 COUNCIL MEMBER KENYATTA: Mr. McCargo
11 --

12 THE WITNESS: Councilperson Kenyatta,
13 for three months we, the country, have been told that
14 this matter concluded because Michael Stefani
15 published a threatening motion dealing with the
16 disclosure of misconduct by the Mayor; a document
17 with which I only have a glancing relationship, and
18 which I to this day have not seen or read in total.
19 We were confronted with a horrible, factual, legal
20 picture. We have a tremendous amount of money that
21 was owed by the City because we lost the case. Not
22 because of text messages, not because of medical
23 records, not because of bank records. That is not
24 why the case was lost, and that's not why the case
25 was settled.

1 We have been -- and I use the "we"
2 collegiately, collectively, and collaboratively -- we
3 have been under the gun, if you will, with the belief
4 that this case closed for one reason and one reason
5 only. That is based in large part upon what was
6 written and the deposition of only one of the four
7 lawyers --

8 COUNCIL PRESIDENT COCKREL: Mr.
9 Copeland, I -- I hate to interrupt, but I think he
10 made that point -- just respond to the question. But
11 I mean that point has been made repeatedly by you,
12 and I think we all get it. I don't know that anybody
13 up here agrees with it, but you've made the point, we
14 hear it; I don't think you need to belabor it.

15 COUNCIL MEMBER KENYATTA: Thank you.

16 COUNCIL PRESIDENT COCKREL: Please
17 respond to Council Member Kenyatta's question --

18 COUNCIL MEMBER KENYATTA: Thank you,
19 Mr. Chair, and which he didn't respond to again.

20 My only question at that time was
21 explain to us how, based on your testimony, that the
22 Confidentiality Agreement, the safety deposit box,
23 and everything in it had nothing to do with the City
24 of Detroit, but with outside people; how is that we
25 get the bill for it? You didn't explain that, that's

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fine.

My last question is simply this.
Based on your testimony, you don't know what's in the
text messages, correct?

THE WITNESS: Correct.

COUNCIL MEMBER KENYATTA: You -- you
don't know --

THE WITNESS: I know --

COUNCIL MEMBER KENYATTA: You don't
even know how important they are? You really don't
know how important they are to the Mayor and to Ms.
Beatty and to the other interested parties; you
really don't know, based on your testimony.

THE WITNESS: I know what I read in
the papers.

COUNCIL MEMBER KENYATTA: Okay. And -
- and you were not the lead attorney on this case,
correct, so you really didn't make the determination
as to what is important and -- and really why
something should be settled or not settled, you
yourself?

THE WITNESS: Individually?

COUNCIL MEMBER KENYATTA: Like -- like
me, who determined there is no money; you really
couldn't determine that, right? You're not me, so

1 you -- you really couldn't determine how -- something
2 should be settled as I was able to determine it?

3 THE WITNESS: Individually, no.

4 COUNCIL MEMBER KENYATTA: Yeah. Okay,
5 thank you. Thank you.

6 COUNCIL PRESIDENT COCKREL: Council
7 Member Collins and I just have two last questions.
8 Council Member Collins.

9 COUNCIL MEMBER COLLINS: Thank you,
10 Mr. President.

11 It just seems obvious to me that
12 Council is not included because Council is not
13 considered part of the City, and that -- Mr. Copeland
14 never had any interaction with us because he only
15 dealt with the Law Department. They found him, they
16 hired him, they talked to him, and they paid him, and
17 he never knew we existed, and as -- as his client.
18 Is that -- is that right, Mr. Copeland? Yes or no?

19 THE WITNESS: By custom --

20 COUNCIL MEMBER COLLINS: What --

21 THE WITNESS: -- my reporting is done
22 to the Law Department. That is --

23 COUNCIL MEMBER COLLINS: Okay. So
24 (inaudible)?

25 THE WITNESS: I -- my reporting is

1 done to the Law Department. That is who I discuss
2 the cases with.

3 COUNCIL MEMBER COLLINS: The only ones
4 you deal with is the Law Department?

5 THE WITNESS: Yeah -- I -- I --

6 COUNCIL PRESIDENT COCKREL: One
7 second. Mr. Goodman?

8 MR. GOODMAN: Only that I think that
9 the witness needs to be allowed to answer the
10 question --

11 COUNCIL MEMBER COLLINS: He answered -
12 -

13 THE WITNESS: -- completely.

14 COUNCIL MEMBER COLLINS: It calls for
15 a yes or no answer.

16 MR. GOODMAN: Some ans -- some
17 questions -- and Member Collins' cannot be answered
18 yes or no, but I think that a -- a brief answer, if
19 not yes or no, would be in order if the witness can -
20 - so that would be my thought and I'm only speaking
21 on behalf --

22 COUNCIL PRESIDENT COCKREL: Brief -- a
23 brief responsive answer.

24 COUNCIL MEMBER COLLINS: Okay.

25 (Inaudible) his answer is yes. That means that no

1 matter what we say to him, it's not going to make any
2 difference. We have -- it's up to us to deal with
3 our own corporate counsel. The problem is in house,
4 not out of house. Thank you. That was one question,
5 if you all noticed.

6 COUNCIL PRESIDENT COCKREL: Thank you
7 very much, Council Member Collins.

8 I want to come back to the point, be -
9 - and I know others have -- I raised it, others have
10 raised it, and the reason I'm going to raise it again
11 is because you truly have not fully responded to it.

12 You said that the agreement was
13 separate. By separate do you mean private?

14 THE WITNESS: I would look at it as a
15 document that was between the signatories. I don't
16 know that I would feel comfortable debating or
17 defining separate versus private. It was a document
18 that was entered into by four parties, the City not
19 being a signatory to the document.

20 COUNCIL PRESIDENT COCKREL: So, that
21 being the case, why do you not characterize that as a
22 private agreement?

23 THE WITNESS: I'm not saying it is not
24 private; I am saying that I don't know that I am
25 comfortable sitting here now debating is it private

1 versus -- versus separate. Is it -- did the case
2 settle because of it? No, it did not.

3 COUNCIL PRESIDENT COCKREL: You've
4 already made that point. I told you before, I don't
5 want to hear that again, all right? I mean you stop
6 short of calling it private. My question then is if
7 it's a separate agreement, once again, why do you
8 believe a separate agreement, if the City in your
9 words is not a party to it, is between the
10 signatories? Why do you believe a separate agreement
11 should be settled using City dollars? If it's
12 between the signatories, let them deal with it. Why
13 do feel that is not the case here?

14 THE WITNESS: Mr. President --

15 COUNCIL PRESIDENT COCKREL: Or should
16 -- or that should not have been the case?

17 THE WITNESS: Mr. Council President,
18 my response would be the one that you have told me I
19 have repeated throughout the course of this event.
20 The settlement of the case and the execution of the
21 documents are separate and distinct. I cannot make
22 it more -- any clearer.

23 The case of Brown --

24 COUNCIL PRESIDENT COCKREL: You can
25 stop at this point. You've made it perfectly clear

1 that's the only answer we're going to get on that
2 score.

3 THE WITNESS: Is it -- I --

4 COUNCIL PRESIDENT COCKREL: I have no
5 further questions.

6 THE WITNESS: It is not an effort to
7 evade, Mr. Council President. You asked me why
8 should they not pay separately with the implication
9 being that the payment of the money was predicated
10 upon what's the Confidentiality Agreement. And all
11 I'm saying is it was not. The payment of the money
12 was predicated upon what happened leading up to the
13 lawsuit.

14 COUNCIL PRESIDENT COCKREL: All right.
15 Mr. Copeland, for somebody that's not making an
16 effort to be vague, you're doing a damn good job of
17 it. So I have no further questions.

18 Are there any other questions from
19 Council members for Mr. Copeland at this time?

20 Seeing none, Mr. Goodman, I'm going to
21 turn the floor back over to you for any closing
22 comments or questions before we bring on our next
23 witness.

24 BY MR. GOODMAN:

25 Q Mr. Copeland, you testified that Ms. Beatty needed to

1 approve the settlement --

2 A That was my understanding.

3 Q Why -- why in your understanding did she have to

4 approve this particular settlement; she had not been

5 a party to the lawsuit?

6 A I -- there were documents that related to her, and I

7 think that there was some -- Mr. Stefani wanted a

8 release with reference to the -- the banking

9 information.

10 Q Wanted a release from Ms. Beatty?

11 A From Ms. Beatty.

12 Q Okay. And he's not here, so we can't -- we can't

13 probe that any further. Let me ask you this; you've

14 indicated that the -- the Confidentiality Agreement

15 was not, in your opinion, material or a substantial

16 part of the settlement, and this is the point that

17 kept creating banter back and forth. Do you consider

18 the Confidentiality Agreement to be a condition of

19 this particular settlement, or a term of this

20 particular settlement?

21 A I would say no.

22 Q All right.

23 A And if -- may I respond?

24 Q Surely.

25 A The reason that I would say no is it was separated

1 out from the eventual settlement agreement. When it
2 was originally signed, it was a tentative agreement.
3 We were trying to get the numbers solidified. The
4 other documents that were later exchanged became part
5 of the discussion; I don't believe they were
6 initiated by us. When the decisions were made to
7 make it a separate agreement, I was not -- it's as if
8 I've not seen it, I don't know if there is language
9 in it that requires approval of it for the case to be
10 settled. It is my belief that it's not.

11 Q You've indicated that it was a separate agreement.

12 A Correct.

13 Q Between those particular four persons; is that right?

14 A Correct; that I did not draft, and have not seen.

15 Q The City of Detroit, in your opinion, was not one of
16 the parties to that particular agreement?

17 A That is my belief.

18 Q Can you explain to them how the City of Detroit is a
19 beneficiary of a forfeiture of the Confidentiality
20 Agreement in terms of liquidated damages if they're
21 not a signatory to that agreement?

22 A It -- that -- that was negotiated by the parties, and
23 you -- I guess that's a question that will have to be
24 posed to them.

25 Q One other thing, and I know that it was Corporation

1 Counsel that brought the settlement here in front of
2 the City Council, and Ms. Osmauede and Mr. Johnson,
3 and you were not -- you did not participate in that.

4 A I did not.

5 Q You, yourself, however, over the years as a very
6 active and distinguished member of the bar and -- and
7 practitioner and trial lawyer, have negotiated many
8 confidentiality agreements; is that not correct?

9 A I have.

10 Q In any of those cases in which you, yourself,
11 negotiated those agreements, have you all -- have you
12 ever failed to disclose the existence of that
13 confidentiality agreement to any of your clients?

14 A It has never been done in a situation where we are
15 talking about a signed document. Usually when
16 confidentiality agreements are made part and parcel
17 of an order, you're talking about money, and the
18 numbers are kept -- generally -- generally they're
19 referred to as disclosures, and that is what you see
20 more commonly.

21 Q And is it not universally the case, in those cases,
22 where you have negotiated in those kinds of
23 confidentiality agreements, that that existence of
24 the confidentiality provision is made known to your
25 client always?

1 A Yes, but it is usually folded in to the agreement.
2 So, it -- that's why -- you -- you're talking about a
3 scenario here that didn't exist; this is a complete
4 separate document.

5 Q I know you're saying apples and oranges, but for the
6 moment talking about your oranges versus this
7 particular apple --

8 A Okay.

9 Q In the case of your oranges, it is always disclosed
10 to the client; is that not correct?

11 A The money?

12 Q Yes, the confidentiality provision.

13 A It is part of the document. It is enfolded into the
14 document. So, of course it is.

15 Q Mr. Copeland, I know that this is not -- the whole
16 situation has been difficult and challenging for you
17 over the past several months, and your testimony
18 today I know have -- as we recognized when we spoke
19 privately, there will be hard questions asked. I
20 really, on behalf of my clients and on behalf of
21 myself want to thank you for being here and for being
22 patient and for answering questions patiently and
23 forthrightly.

24 A May I respond?

25 Q Yes.

1 A As I've told you before, I do not believe that a
2 subpoena was necessary. I appeared because I do view
3 you as my clients. I deeply regret the fact that
4 many of you found my answers to be evasive or
5 unsatisfactory. You asked questions that cannot be
6 responded to yes or no; you have a scenario here that
7 does not comport with the belief that everybody in
8 this room entered with as having been the scenario.
9 My efforts were not to befuddle; my efforts were not
10 in any way to restrict or limit the information that
11 I provided to you. Everything that was done by me
12 and by my law firm was done in an effort to limit the
13 amount of money that was going to have to be paid by
14 the City of Detroit. The fact that you were not
15 advised at a hearing that I did not attend of a
16 confidentiality agreement was not meant as a slight.
17 The fact that I did not talk to you about it was not
18 meant as a slight. I have never been in front of you
19 to talk to you on any case, other than perhaps one in
20 the past. You are not the subject of disregard by me
21 or by my law firm, and I apologize to you if you feel
22 that the actions that we took in an effort to
23 conclude this case for as little money as we deemed
24 humanly and legally possible --

25 COUNCIL MEMBER WATSON: Thank you,

1 attorney Copeland. Thank you.

2 THE WITNESS: -- was inappropriate;
3 thank you very much.

4 MR. GOODMAN: Thank you very much. We
5 all understand that you could have chosen not to
6 either appear or testify today, and I appreciate your
7 appearance. Thank you.

8 THE WITNESS: Thank you.

9 COUNCIL PRESIDENT PRO TEM CONYERS:
10 Can we call the next witness?

11 MR. GOODMAN: Yes. I would call
12 Professor Bridget McCormack.

13 President Pro Tem, how much time do we
14 have?

15 COUNCIL PRESIDENT PRO TEM CONYERS:
16 It's 5:25. Maybe you could limit your opening so
17 that Council members can, you know, ask the questions
18 they may have, and --

19 MR. GOODMAN: I will try to do that.
20 May -- may I have --

21 COUNCIL PRESIDENT PRO TEM CONYERS:
22 Yes.

23 MR. GOODMAN: -- a two-minute break,
24 while --

25 COUNCIL PRESIDENT PRO TEM CONYERS:

1 Okay. We'll give us a five-minute break?

2 (WHEREUPON, a brief recess was taken
3 from 5:23 p.m. to 5:45 p.m.)

4 COUNCIL PRESIDENT COCKREL: Good
5 evening. We're going to proceed with our hearing,
6 and our final witness for today, who is Dr. Bridget
7 McCormack; good evening.

8 DR. MCCORMACK: Good evening.

9 COUNCIL PRESIDENT COCKREL: Thank you
10 for your patience. I know you've been sitting a long
11 time. First item of business for you would be for
12 you to be administered the oath, and Ms. Monte will
13 do that.

14 COURT REPORTER: Do you solemnly swear
15 or affirm to tell the truth, the whole truth, and
16 nothing but the truth, so help you God?

17 DR. MCCORMACK: I do.

18 BRIDGET MCCORMACK

19 DULY SWORN, CALLED AS A WITNESS, TESTIFIED AS FOLLOWS:

20 EXAMINATION

21 BY MR. GOODMAN:

22 Q Professor McCormack, is that appropriate?

23 A That's fine.

24 Q Could you tell the jury -- excuse me, it's getting
25 late again. Tell the members of Council your name,

1 please?

2 A It's Bridget McCormack.

3 Q And you're an attorney?

4 A That's right.

5 Q Where do you practice law?

6 A I practice in Michigan, although I'm also licensed in
7 New York -- a member of the bar --

8 Q And just briefly give us a rundown -- we have your --

9 MR. GOODMAN: Council Members, in the
10 blue supplement we have Professor McCormack's resume
11 under tab -- tab nine.

12 COUNCIL PRESIDENT COCKREL: Continue,
13 Mr. Goodman.

14 BY MR. GOODMAN:

15 Q Where are you currently employed?

16 A I am a professor of the University of Michigan Law
17 School.

18 Q And what subjects and areas do you teach?

19 A I teach criminal law, I teach legal ethics, and I
20 teach in the clinical programs where my students
21 practice law.

22 Q Have you published in any journals or publications?

23 A I have, and my CV has a -- a list of those, yes.

24 Q In the field of legal ethics as -- along with the
25 other areas that you've mentioned?

1 A Well, legal ethics is a common area that -- that
2 comes up in my practice, and so it is an area that I
3 (inaudible) myself as well.

4 Q Now, have I asked you to appear here and -- and
5 review certain material and answer certain questions
6 in front of City Council in connection with the
7 Brown, Nelthrope, and Harris settlement, as well as
8 generalized procedures and structures -- the City of
9 Detroit?

10 A Yes, you have.

11 Q And have you reviewed the material which Council
12 members have in front of them, which is this spiral
13 book, what we've been calling the blue-covered book,
14 and other materials as well, the Stefani deposition,
15 and the closed session of -- of City Council that's
16 now been unsealed of September the 19th; have you
17 reviewed all of that material?

18 A I -- I have reviewed all that material. I've also
19 done my own research into some of the questions
20 surrounding ethics for government lawyers in
21 particular, which sometimes are a little bit
22 different than other lawyers, and I have read a
23 number of -- articles and ethics opinions on that
24 topic as well to prepare for today's hearing.

25 Q Have you reviewed by the way as well the City Charter

1 of the City of Detroit?

2 A I -- I have reviewed the parts that I believe to be
3 relevant to -- to the questions that this body is
4 interested in.

5 Q And you've also looked at the website for the City of
6 Detroit Corporation Counsel; is that right?

7 A In fact I did, yes.

8 Q And reviewed what it puts forward on its website as -
9 - as its mission statement; is that correct?

10 A That's right.

11 Q Let me start preliminarily with this question for
12 you. Based upon the materials that you reviewed, who
13 does the Corporation Counsel and its staff represent
14 in litigation; in other words, who is the client for
15 the City of Detroit Corporation Counsel?

16 A It -- it's my understanding that the client for the
17 Corporation Counsel is the City of Detroit; that is
18 who the client is.

19 Q And what does that mean? As I think it was -- Member
20 Kenyatta asked the last witness, what does it mean to
21 represent the City of Detroit? Are you talking about
22 all the people in the city, are you talking about
23 city government, are you talking about a geographical
24 location; what is it?

25 A Well -- so, it turns out to be a question about which

lots of scholars have done a lot of writing, and there are broad definitions, and there are narrow definitions, but the definitions that you find when you look in ethics opinions are that the Corporation Counsel represents this body; the City Council, as the representatives of the City of Detroit.

Q Does it all -- does the Corporation Counsel; that is the person who holds the title of Corporation Counsel and his staff also represent the Mayor of the City of Detroit?

A The Corporation Counsel can represent the Mayor in conjunction with representing the City Council, as long as there is no conflict; as long as no conflict arises in representing both of those separate clients. The Mayor is a constituent of the organization of the City of Detroit. The Mayor is really just one constituent; there are probably others that the Corporation Counsel has to negotiate with and deal with in its ethical representation of the City of Detroit.

Q Would the example of a city clerk for the City of Detroit be another constituent in those -- in that sense?

A Exactly.

Q Or a particular member of Council?

1 A Absolutely, yes. And -- and each of those
2 individuals could be, in certain litigation,
3 represented by the Corporation Counsel, assuming
4 there was no conflict between that representation and
5 the Corporation Counsel's primary duty to its primary
6 client, the City of Detroit.

7 Q Now, you say assuming there is -- there was or is no
8 conflict. The issue of conflict of interest is one
9 that has been closely studied in your field of
10 scholarship; is that correct?

11 A It -- it -- to be perfectly honest, it's actually
12 closely studied in my teaching in a day-to-day way
13 more than anything else, and both in my standalone
14 ethics courses, where it's -- occupies a significant
15 portion of the course, and in my clinical courses,
16 where students actually get their ethics credit for
17 the clinical courses, it is a daily issue that we
18 think about, talk about, and teach about, yes.

19 Q And how does the -- how -- how does -- withdraw that
20 question. When you are dealing with an institution,
21 such as the City of Detroit and in particular, the
22 Law Department of the City of Detroit, which as you
23 said has as its client the City of Detroit, under
24 what circumstances can potential conflicts of
25 interests arise --

1 A So, the -- the particular role the lawyer plays in
2 representing an organization is -- is governed by its
3 own ethics rule, and -- which is separate from the
4 conflicts rule. There -- there is an ethics rule for
5 lawyers who are representing an organization that
6 gives you in -- in a way as a lawyer for an
7 organization, even more guidance than the conflicts
8 rule. But both are important, and I think your
9 question is kind of asking about both.

10 Q Okay. So --

11 A So -- but -- but some of you want to be more
12 specific.

13 Q How does -- how does the ethics -- how does the
14 ethics rule, as you've said, come into play with
15 regard to the determination of whether there's a
16 conflict of interest and --

17 A Yes.

18 Q -- disclosure of that information?

19 A I -- I -- I think I know what you're asking. So --
20 so for lawyers to represent organizations, and this
21 is true for lawyers who represent a private
22 corporation and they're dealing with a board of
23 directors and officers, or lawyers in state and city
24 governments, who represent the city or whatever the
25 government agency or entity is, will have occasions

1 where it -- it comes to their attention that a
2 constituent is acting arguably not in the best
3 interests of -- of the organization or worse, in a
4 way that is against the law, fraudulent, and could
5 harm the organization. When that's true, there is
6 specific instruction in the rules for what a lawyer
7 is supposed to do.

8 Q And -- and just for the record for anybody who's
9 paying close attention to the legal technicalities,
10 this would be Michigan -- Michigan Rules of
11 Professional Responsibility, 1.13; am I correct in
12 that --

13 A That's correct. That's exactly correct. That's what
14 I'm -- that what I'm referring to.

15 Q And how does it work?

16 A Well --

17 Q Describe how that would come about.

18 A A lawyer's duty in a situation where one of its
19 client's constituents is acting in a way that is
20 causing the organization injury or might result in
21 substantial injury, the lawyer has an obligation to
22 take that information to its client; up the line in
23 terms of authority, if there are levels of -- of --
24 of persons in authority who the lawyer can refer the
25 matter to and take the matter to. The lawyer is

1 obligated to inform its client through a series of
2 conversations -- the client is informed, he can do
3 something about it.

4 Q And in this case, informing the client would -- would
5 -- and when I say in this case, I mean in the case of
6 the City of Detroit --

7 A Yes.

8 Q -- informing the client would require what?

9 A In this case, it's my opinion that the -- the lawyers
10 who were specifically the City's lawyers, and I
11 understand that not every lawyer in this -- that
12 you're looking at was the City's lawyer. But the
13 lawyers who were the City's lawyers had an obligation
14 to advise this body, this Council, of -- of -- of the
15 information it had, the lawyers had, about one of its
16 constituents potentially fraudulent, potentially
17 injurious conduct to this City.

18 Q And so if hypothetically, because nobody was actually
19 seen there, but if there were text messages that
20 indicated that the Mayor or his former chief of
21 staff, also an employee of the City of Detroit at one
22 time, had not -- had acted dishonestly in their
23 testimony in a court -- in a trial in court, under
24 oath, testified dishonestly, would that be the kind
25 of information that under Rule 1.13, could be or

1 would be injurious to the -- to the client, to the
2 City of Detroit?

3 A I -- I imagine that lawyers could argue about whether
4 that information is injurious or not. It seems to me
5 if I were the lawyer, I would think it's -- it's at
6 least potentially injurious enough that I would want
7 to take it to my client, to have them decide what to
8 do about it.

9 Q Now, in this particular case, one of the employees of
10 the City of Detroit Corporation Counsel, Ms. Colbert-
11 Osmauede, appeared in this particular litigation as
12 an attorney both for the City of Detroit and for the
13 Mayor of the City of Detroit. How should she --
14 well, first of all, does that present an ethical
15 problem under 1.13, and does it prevent -- present a
16 conflicts of interest problem -- a conflict of
17 interest problem, and I believe in that case the
18 court rule -- or the rule would be 1.7 --

19 A That is correct.

20 Q -- is that correct?

21 A It's -- it is within a city lawyer's discretion to
22 represent both the city and the mayor under 1.13;
23 1.13 is specific about that, assuming there is no
24 conflict under the 1.1 -- under rule 1.7. And the
25 ethics opinions, the very -- the few that are out

1 there, and the conflux of city attorneys support
2 this; that in fact, if a lawyer wants to represent
3 both parties, and can do so without conflict of
4 interest, it's okay for the lawyer to do it. If it
5 turns out that there is a conflict of interest, 1.1 -
6 - 1.7 prohibits the representation, and 1.13 requires
7 that the -- that the lawyer advise the officer or
8 constituent of the conflict, and no longer represent
9 the conflicted party.

10 Q So, hypothetically for the moment, assuming that a
11 lawyer for the City of Detroit Law Department learns
12 of the existence of these text messages, and learns
13 that the text messages do either clearly state or
14 suggest that the Mayor and other City employee may
15 have lied under oath, can or should that information
16 be disclosed or divulged to someone else; aren't they
17 then betraying an attorney/client confident --
18 confidence or privilege?

19 A 1.13, specifically section (c)(2), permits the lawyer
20 to go to their client with information that might
21 have been protected under the confidentiality rule,
22 which is, for the record, 1.6, under circumstances
23 where the lawyer believes the violation will result
24 in substantial injury. It's sort of -- the rules
25 kind of up the requirement for the injury, but if

1 it's potentially substantial injury, the
2 confidentiality rule falls away. And now let me --
3 but -- but let me say -- let -- let me say I only
4 believe that confidentiality is a factor at all
5 because the lawyer is representing both the Mayor and
6 the Law Department. If from the beginning, the
7 lawyer's role had clearly been, "I am City Council's
8 lawyer, somebody else is the Mayor's lawyer," we
9 don't have a 1.6 problem at all. She takes the
10 information to her client, who she's supposed to be
11 able to serve, right? She's got herself in a tough
12 position here, because she's now formed a
13 lawyer/client relationship with the Mayor and she's
14 got a lawyer -- previously -- a -- a previous
15 relationship with City Council -- the City of
16 Detroit, I should say, and she -- this is why -- you
17 know, this is why lawyers can't represent clients who
18 are in conflict. What is she supposed to do? She
19 really needs to give her client this information
20 according to rule 1.13, but she's promised this other
21 client confidentiality.

22 Q Well, are you saying that a lawyer cannot initiate
23 representation without -- before they know that such
24 a conflict may exist on behalf of both the
25 constituent, as you said, and the -- the

1 institutional client, in this case the City of
2 Detroit as well?

3 A I'm not saying they cannot. I -- although I have to
4 say in a case like this one, they would have been
5 wise from the beginning to have a better conflicts
6 check in place so that in a case like this, from the
7 very beginning, these parties had separate lawyers,
8 and this body could have had a lawyer who served it
9 exclusively.

10 Q This body being the City of Detroit -- the Detroit
11 City Council; is that right?

12 A That's -- that's right. But -- but to -- but I don't
13 know if I finished my answer to your question. You -
14 - you -- you -- a lawyer can engage both clients. A
15 lawyer can represent the mayor and represent the --
16 the city in the same litigation, assuming -- up until
17 there is a conflict. When there is a conflict, the
18 lawyer's going to have -- the lawyer is going to have
19 to advise their client of the conflict, and get out
20 from under his representation.

21 Q As soon as they real -- recognize the conflict?

22 A Yes.

23 Q And if --

24 A Now, I'm not saying -- I -- I don't know -- I mean
25 the -- it may be that the lawyers in this case don't

1 think there was a conflict. They may think the
2 interests were still aligned, because City Council
3 would have an interest in having this information
4 kept as quiet as possible. I'm not -- I'm not trying
5 to, you know, make a determination about whether
6 there was definitely a conflict, although I -- if it
7 were my law license, I would be --

8 Q Let -- let me just -- let's back off from that for
9 just a moment. In a situation where someone
10 represents the -- let's say the Mayor --

11 A Yes.

12 Q -- and represents the City of Detroit --

13 A Mm-hmm.

14 Q -- and they come across the kind of information we've
15 talked about, text messages that -- that reflect or
16 indicate or outright say that there has been
17 dishonest testimony, and you -- you say at that point
18 they have an obligation to -- to unravel the conflict
19 and -- and extricate themselves from the
20 representation of one of those clients; is that
21 correct?

22 A Absolutely.

23 Q Which one?

24 A Well, you -- you -- as you well know, in -- in lots
25 of conflicts cases, sometimes the answer is the

1 lawyer can no longer represent either party. That is
2 sometimes the result of a significant conflict. It -
3 - it is my opinion, having read a number of ethics
4 opinions for city attorneys, that -- that in -- in
5 each of them, the ethics opinion says the city
6 attorney must remember that she represents the city
7 council entity, not city departments, city officials,
8 or individual council members, including the mayor.
9 And so she has a primary client, and I -- I believe
10 if there is a way to continue to represent her
11 primary client well, and under these facts as I know
12 them so far, there may well have been, she would have
13 a duty to advise -- to terminate her representation
14 of the other client and continue her --

15 Q Extricate herself from the relationship with the
16 mayor to represent the city council?

17 A Yes.

18 Q Now, just suppose hypothetically -- well, withdraw
19 that. For the moment, let's reverse the -- reverse
20 the scenario here, the -- from this scenario -- and
21 assume that the attorney represents only the
22 constituent, in this case the Mayor.

23 A Mm-hmm.

24 Q You -- and then -- and as you understand it that
25 would be Mr. McCargo's role; is that right?

1 A Yeah, and for Mr. McCargo to represent just the
2 Mayor, I don't see any problem with that. If you're
3 asking could the Law Department represent only the
4 Mayor, I don't think because they represent the City
5 no matter what, I don't think there's any way they
6 could represent just the Mayor. But if you're asking
7 about Mr. McCargo --

8 Q I am asking --

9 A -- I do think he's in a different category.

10 Q Does it make any difference as far as him having a
11 conflict of interest between the Mayor and the City
12 of Detroit, if the City of Detroit is paying his
13 bills?

14 A No. In fact, the -- the rules specifically allow for
15 your fees to be paid by someone other than your
16 client, as long as it's clear in your retainer
17 agreement who your client is, and the question of who
18 your client is is the most important one in all of
19 these ethics questions, because it's that person to
20 whom you owe your duty.

21 Q Have --

22 A It doesn't matter who is paying -- who is paying your
23 bill. You have your duty to your client.

24 Q Have you reviewed the scope of service in Mr.
25 McCargo's contract with the -- with the City of

1 Detroit, what his scope of service is supposed to be
2 and was?

3 A I -- I have.

4 Q And what is your understanding based upon that
5 review?

6 A My understanding is that -- is that -- is that Mr.
7 McCargo was retained to represent the Mayor and the
8 Mayor only. But if there's other information that I
9 haven't seen, you can tell me about it. But that's -
10 - that's what I saw.

11 Q You've seen what I saw.

12 A Okay.

13 Q In light of that, and in light of the facts that have
14 now sort of surfaced as a result of -- all of the
15 Brown and Nelthrope matters, the investigation, all
16 the rest of it, is there a way that the City of
17 Detroit can protect itself in drafting these scope of
18 service agreements, so that in the future when a con
19 -- with a situation arises where there's a conflict
20 between the constituent, in this case, for example,
21 the Mayor --

22 A Mm-hmm.

23 Q -- and the City of Detroit which is footing the bill
24 and paying for it, that -- that the City does not
25 have to pay for lawyers services to represent one of

1 its officials or employees who is acting in --
2 perhaps against its interests; is there a way to do
3 that?

4 A I -- I would imagine that there -- that the City --
5 that this body can structure its contracts for
6 services in any way it wants, and I imagine that
7 they'd have cause for -- I mean it doesn't make sense
8 to me that this body would want to have the policy
9 that it never paid for separate counsel for
10 constituents, because it strikes me that there might
11 be lots of occasions where even if there's a
12 potential conflict, so it make sense ethically just
13 to insure this body gets excellent representation
14 from its lawyers, to have separate lawyers; they
15 still are, for the most part, wanting to resolve the
16 litigation in a way that -- that make sense for this
17 body to pay for it. Having said that, I imagine
18 there are lots of ways to structure a contract so
19 that someone can -- a constituent could make himself
20 ineligible for the City's bill paying by his or her
21 conduct, right; it -- it strikes me that a contract
22 could be written up.

23 Q Let me ask it this way; would it violate any legal
24 principles that you're aware of, or any rules or
25 laws, were the City to require counsel whom it is

1 paying to represent one of its constitutes notify it
2 when that lawyer recognizes or realizes that there is
3 a conflict of interest between the interests of the
4 constituent and of the body as a whole? And --

5 A So, wait a minute. You want to structure the lawyer
6 who's been hired to represent the constituent, you
7 want to structure into his contract some ethical duty
8 to another client?

9 Q An obligation to advise the other client -- yeah --

10 A Yeah --

11 Q -- the City of Detroit in this case, that there is a
12 conflict, and the -- without disclosing necessarily
13 what the conflict is, but so the City can determine
14 whether it wants to continue to pay for those
15 services?

16 A Well, I think that's a tricky question. I would have
17 to give it a little bit more thought. I'm not sure,
18 because of that lawyer's other obligations to the
19 client he or she represents at that point, how you
20 could contract around her ethical obligations to her
21 current client, the -- the most important one being
22 confidentiality. I can imagine lots of situations
23 where information is going to come up in the nature
24 of the confidential relationship which might
25 implicate this clause, and putting that lawyer on the

1 hook for revealing it to someone who's not her client
2 puts her in conflict with her own client.

3 Q I --

4 A And that's complicated --

5 Q I would like you to think about -- I'm going to ask
6 you to write a brief -- supplementary report at the
7 end of this, because our time is shortened and there
8 might be --

9 A Okay.

10 Q -- that you could address for us.

11 A Okay.

12 Q Going back to the situation that we've been talking
13 about where a lawyer represents both the City of
14 Detroit and a constituent, in this case the Mayor --

15 A Yes.

16 Q -- assuming for the moment that that attorney does
17 not learn of the existence of the text messages, but
18 does learn about a settlement involving the Mayor and
19 the -- and certain litigants and the City of Detroit
20 as well, and does learn that there's a
21 confidentiality agreement that protects that kind of
22 information, does that attorney have a conflict
23 between the Mayor and the City at that point?

24 A So, I'm sorry; you lost me halfway through the
25 question. Which lawyer are we talking about?

1 Q We're talking about, for example in this situation,
2 Ms. Osmauede.

3 A The Law Department?

4 Q That's right, the Law Department, who represents both
5 the City of Detroit and the Mayor of the City of
6 Detroit, and does not know, let us say for the
7 moment, the existence of the -- the contents of the
8 text messages, but does know that they exist and
9 knows that they are protected by a confidentiality
10 agreement in a settlement.

11 A I --

12 Q Does she have a conflict of interest?

13 A I think there's a -- I think there's -- conflict at
14 that point. I mean she -- whatever she knows about
15 the details of the text messages, she knows that one
16 of her clients, the Mayor, wants them kept
17 confidential, and it may or may not be in her other
18 client's interest to keep it confidential; that's for
19 her other client to figure out, and she can't go tell
20 her other client because she has a confidentiality
21 obligation to her Mayor client. So I believe at that
22 point, she is in a impossible conflict --

23 Q Does she have an obligation to disclose the existence
24 of the confidentiality agreement, without even
25 assuming for the moment she doesn't know what the

1 contents of the text messages are; does she have an
2 obligation to disclose the existence of that
3 confidentiality agreement to the City Council, which
4 is obligated to consent to and approve the settlement
5 as a part of her -- it's Charter responsibilities?

6 A I -- I can't see any way around that obligation. I
7 mean this is -- what -- no matter how separate these
8 agreements were, they -- the -- the confidentiality
9 agreement plainly motivated the settlement, at least
10 from the Mayor's perspective -- the constituent's
11 perspective -- and this body, in deciding whether or
12 not to approve the settlement, whether or not it was
13 in the -- the City's best interests, is entitled to
14 all of the information that is motivating the
15 settlement. They may have come to the same
16 conclusion that the lawyers did. I -- I take the
17 lawyers at their word if they say we were acting in
18 the City's best interests, but they may not. Because
19 you never know what's motivating the lawyer when they
20 have a separate client on the line, and by the way a
21 separate client who hires and fires from Corporation
22 Counsel.

23 Q And that would be true not only for -- in this case,
24 you understand that was Ms. Osmauede's role, but also
25 that would apply to Corporation Counsel, Mr. Johnson,

1 as well, when he signed off on at least some of these
2 agreements?

3 A That's my --

4 Q Would you agree with that?

5 A I do. This -- this isn't -- this isn't -- this is
6 sort of a -- a common problem for lawyers who
7 represent -- this is -- this is why Al Gonzales
8 finally lost his job, right, when he -- when he went
9 from being the President's lawyer to the United
10 States' lawyer, he never understood the difference in
11 those roles, and he thought he was still the
12 President's lawyer, but he wasn't the President's
13 lawyer, and he finally lost his job over it. This is
14 -- this is kind of -- this is actually a common
15 problem for lawyers in this job. It's a hard -- it's
16 a hard thing to sort through.

17 Q You mentioned the fact that the Mayor of the City of
18 Detroit -- additional complication in a situation
19 that we've been talking about is the fact that the
20 Mayor has the power to fire Corporation Counsel; is
21 that correct?

22 A Yeah. My understanding of the Charter is the Mayor
23 hires Corporation Counsel with this body's approval,
24 and fires the Corporation Counsel when he feels like
25 it, without this body's approval, and I -- in -- in

1 my view, and there's actually some fairly old but
2 still good scholarship on this topic, that adds yet
3 another level to the conflict, which is really
4 important for this body to think about going forward.
5 Because the lawyers are not only conflicted about who
6 their client is, but they have their own personal
7 interest at stake, and that is yet another level to
8 the -- to the conflict problem that keeps the lawyer
9 from doing right by this client.

10 Q Given -- do you have a sense of the size of the Law
11 Department of the City of Detroit?

12 A I -- I believe it's 80 to 100 lawyers; is that
13 correct?

14 Q Eighty to 100 lawyers; is that right?

15 MR. WHITAKER: Sounds good to me.

16 COUNCIL MEMBER COCKREL: There was at
17 one time; who knows what's left.

18 COUNCIL MEMBER COLLINS: I think it's
19 120.

20 COUNCIL MEMBER COCKREL: No, it's not
21 120.

22 BY MR. GOODMAN:

23 Q Given an office with that many lawyers in it, and the
24 kinds of institutional representational issues that
25 we've been discussing, do you have an opinion as to

1 how the Law Department should deal with potential
2 conflicts of interest and representation of both the
3 generalized institution of the City of Detroit
4 itself, as well as constituents of the City of
5 Detroit as you have defined them?

6 A I -- I do. I have a few recommendations that I'll
7 throw out there, for whatever they're worth. I think
8 that the Corporation Counsel's office needs a
9 systematic and formal conflict-slash-ethics risk
10 management system. There needs to be a formal and
11 systematic conflicts check on every new matter that
12 comes into the office. This shouldn't have to take a
13 long time; it shouldn't be burdensome; it shouldn't
14 requiring hiring extra staff. There's got to be some
15 non-political appointee staff lawyer on that -- in
16 that office who's got some background or interest in
17 ethics who can be the in-house ethics officer, and do
18 the conflicts check, and keep a record of it. And
19 when something doesn't pass that check, that's when
20 we're gonna -- I -- I would recommend that this body
21 think about separate counsel from the very beginning.
22 Not having the Corporation Counsel represent both the
23 -- the City of Detroit and the constituent, but
24 separate counsel for the constituent.

25 Q It doesn't have to be this body that considers

1 separate counsel for the constituent, it could be the
2 Corporation Counsel; isn't that correct?

3 A That's absolutely right. I -- I -- but it might be
4 that this body wants information about when those
5 arrangements are made. This -- this body might want
6 more information about when other lawyers are hired,
7 and who they're hired for, and who's representing
8 who. It's not clear to me who was informed at what
9 point which lawyers represent -- represented which
10 parties in all of this.

11 Q But at least -- one of the things you're saying is
12 that as a routine matter, every case that comes
13 through that office can be con -- can be checked for
14 conflict of interest and any other ethical problems
15 that may arise, and they can be checked off and say
16 there is no such problem in -- in this case, or there
17 is a problem in this case and it has to be channeled
18 through separate counsel for somebody or that kind of
19 thing; is that right?

20 A Absolutely.

21 Q And --

22 COUNCIL PRESIDENT COCKREL: Mr.
23 Goodman?

24 MR. GOODMAN: Yes?

25 COUNCIL PRESIDENT COCKREL: What I'd

1 like to do is once Dr. McCormack finishes laying out
2 her -- off the top of her head recommendation, I want
3 to go to questions from colleagues, because I know --
4 it's 6:09, and I know there's some Council members
5 that do have to go. And then what I can do is come
6 back to you for any additional questions.

7 MR. GOODMAN: Okay.

8 BY MR. GOODMAN:

9 Q Well go -- you were in the middle, however, of an
10 answer, Professor.

11 A Yeah. I --

12 COUNCIL PRESIDENT COCKREL: Right.

13 And that's why I said after she finishes that
14 response.

15 THE WITNESS: The -- the systematic
16 and formal conflicts and ethics risk management
17 system that I'm calling that should be put in place,
18 I think could be done without spending any extra
19 money. I think separate counsel should be hired when
20 case -- when matters come in and don't pass that
21 test. And when separate counsel is hired -- the Law
22 Department's role should clearly be representing the
23 City and the City only, and separate counsel should
24 be provided for the constituent when -- when -- in 99
25 percent of the matters that come through, there's not

1 going to be a conflicts problem -- constituents are
2 also acting in the best interests of our city, and so
3 that there's not going to be a need for separate
4 lawyers in most case; there really shouldn't be a
5 need for -- in most cases. But when there is, and
6 there is, then it makes sense to -- to get it at the
7 beginning and not to wait until now.

8 MR. GOODMAN: And -- and -- go ahead,
9 I'm sorry.

10 THE WITNESS: He said --

11 MR. GOODMAN: Finish. Go ahead.

12 COUNCIL PRESIDENT COCKREL: Yeah --

13 THE WITNESS: He's the boss here, I
14 can tell, so --

15 COUNCIL PRESIDENT COCKREL: Finish
16 your recommendations and then we'll go to questions
17 from Council members.

18 THE WITNESS: And I -- I don't know
19 what your process is for amending for your Charter,
20 but I would give some serious thought to this body
21 having some check on the Mayor's ability to fire
22 Corporation Counsel at will. It doesn't make sense
23 to me to add that conflict into the -- the mix of
24 what can be an ethically difficult attorney/client
25 relationship. So I would -- if -- if there's a way

1 to do that, that's something I'd want to give some
2 thought to.

3 Finally, your mission statement on
4 your website, someone's got to look at -- it says
5 that our mission is to represent the executive and
6 the legislative branches of the city government.
7 That's -- I -- I don't think that's -- I think your
8 mission is that you represent the city of Detroit,
9 this body represents the city of Detroit. I don't
10 think your website should say otherwise. (Inaudible)

11 MR. GOODMAN: May I have one very
12 brief follow-up, Mr. President?

13 COUNCIL PRESIDENT COCKREL: Very
14 brief.

15 BY MR. GOODMAN:

16 Q So that if this routine conflict of interest check is
17 done, what you call conflict risk management; that's
18 not like --

19 A It would be --

20 Q -- (inaudible).

21 A Right. No.

22 Q But it's --

23 A Ethics --

24 Q -- addressing the risk of a conflict, right?

25 A That's correct.

1 Q If that's done, that could be checked off on a form,
2 such as a -- lawsuit settlement memorandum form, so
3 that Council knows that in every case that it
4 approves a settlement for, there has been a conflict
5 check?

6 A And Council can always ask for those forms, I assume.
7 Yeah, absolutely.

8 Q Okay.

9 COUNCIL PRESIDENT COCKREL: Thank you
10 very much, Mr. Goodman. Again, I will come back to
11 you for closing questions.

12 I have just a couple brief questions,
13 and then Council Member Cockrel and President Pro
14 Tem, and Council Member Watson.

15 COUNCIL PRESIDENT PRO TEM CONYERS:
16 (Inaudible)

17 COUNCIL MEMBER JONES: Mr. President,
18 I don't have any questions, but I -- I would like to
19 be excused; I have a (inaudible).

20 COUNCIL PRESIDENT PRO TEM CONYERS:
21 Okay. That's what I thought --

22 COUNCIL PRESIDENT COCKREL: Thank you.
23 My question is -- first question is,
24 in your view is there a difference --

25 Can we get the sergeant at arms to

1 check out that noise outside? Make sure they wrap up
2 or at least keep it down.

3 Is there a difference between the
4 ethical duties of the City of Detroit Law Department
5 to the Detroit City Council as its client, versus the
6 difference that an individual attorney would have to
7 an individual client, or is it basically the same as
8 to the duties and obligations?

9 THE WITNESS: Well, it's -- it's
10 basically the same ethical duty and obligation.
11 Because the client is an organization or, you know,
12 an entity and not an individual, it sometimes makes
13 it complicated in the doing. But the obligations are
14 the same. You are owed information, you are owed
15 diligent services, you're owed all of the -- the
16 kinds of obligations a lawyer gives an individual
17 client, absolutely.

18 COUNCIL PRESIDENT COCKREL: And I know
19 it's difficult being on the outside looking in,
20 because I'm sure that much of what you know about
21 this situation in this case stems from probably
22 reading newspaper articles and reading any
23 information that attorney Goodman has supplied to
24 you, but in your view, does what you see suggest that
25 some of the attorneys involved in this situation

1 acted in a -- unethically or maybe even illegally?

2 THE WITNESS: I think that -- I -- I -
3 - I would put it to just -- address the unethically,
4 but -- but my -- my view is Law Department lawyers
5 and frankly Mr. Copeland, whose client was the City
6 of Detroit, violated their -- some of their ethical
7 duties to this body.

8 COUNCIL PRESIDENT COCKREL: And I
9 think I heard the answer to this question, but I just
10 want to make sure I'm clear. If the Law Department
11 knew about the Confidentiality Agreement, and clearly
12 we know they did know, and did not report it to City
13 Council, was in this in your view an ethical
14 violation?

15 THE WITNESS: I believe it is an
16 ethical violation --

17 COUNCIL PRESIDENT COCKREL: You
18 believe it is?

19 THE WITNESS: I believe it is, yes. I
20 believe that you -- no matter how separate you call
21 it, it was plainly a motivating factor for their
22 deciding to settle, and for the Mayor deciding to
23 settle, and this body had a right to get that
24 information and decide what to do with it, if
25 anything. You may have decided that the lawyers had

1 it right, right? But you may not have. In the
2 Confidentiality Agreement itself, I -- I believe Mr.
3 Goodman said earlier, you may have felt the
4 liquidated -- liquidated damages clause wasn't
5 enough. It's kind of for you to decide, right?
6 You're the City, you're the client, you're the one
7 who's going to get the benefit of it; you should be
8 able to decide that for yourselves.

9 COUNCIL PRESIDENT COCKREL: Thank you
10 very much. No further questions. Council Member
11 Cockrel is next.

12 COUNCIL MEMBER COCKREL: Thank you.
13 Professor, I really appreciate you being here this
14 evening, and your rational, lucid, and direct answers
15 to questions has been very helpful.

16 A couple things. One, did you --
17 could you provide us, through Mr. Goodman, copies of
18 your opinions that you have discussed relative to the
19 roles of city attorneys?

20 THE WITNESS: Yes. I -- I only have
21 my own copies right now, so I will --

22 COUNCIL MEMBER COCKREL: Sure.

23 THE WITNESS: -- get them to him
24 after.

25 COUNCIL MEMBER COCKREL: And then the

1 other thing; you know, what you -- you've said, and I
2 -- I want to be real clear on this, because in my
3 opinion, this turns on its head our experience -- my
4 experience with the Corporation Counsel's office over
5 many years on this Council and previously when my
6 husband was here. Are you saying that the
7 Corporation Counsel's client is the City of Detroit,
8 and by definition being the governing body, the
9 legislative body of the city; we are the -- the
10 foundation -- the core client of the -- to be
11 represented by the Corporation Counsel's office?

12 THE WITNESS: Yes, that's exactly what
13 I'm saying.

14 COUNCIL MEMBER COCKREL: Well, that --
15 that is turning everything (inaudible) --

16 THE WITNESS: I -- I'm not surprised
17 to hear that. When John Ashcroft was first named
18 Attorney General, he was on Larry King Live, and
19 Larry King said to John Ashcroft, "Who's your client,
20 the President or the United States?" and he said
21 "Yes" and laughed. So, you know, you're not -- this
22 isn't the first government that's struggled with this
23 issue, but -- and -- and too bad for you that it had
24 to come out in this way, but why not sort it out and
25 figure it out going forward?

1 COUNCIL MEMBER COCKREL: (Inaudible)
2 could I ask you and Mr. Goodman as well, that we look
3 at -- that you look at -- if you would not mind, and
4 I appreciate you being here pro bono, because this
5 poor ass city needs no more additional ways to spend
6 money, if you would look at the entire section that
7 deals with the Law Department, and look at things
8 like should -- should the Law Department stand --
9 should have been a separate part of the Charter that
10 deals with Corporation Counsel separate from the Law
11 Department; look at the whole thing and in terms of
12 looking at future Charter revisions or Charter
13 amendments; how we might be able to sort of turn this
14 sort of structure that we have now into one that more
15 correctly comports to the state of the law?

16 THE WITNESS: Yeah, I -- I could do
17 that. I -- I want you to know that I think some of
18 it is, like you've said, a matter of tradition, and
19 changing tradition doesn't always happen when -- but
20 you have to start somewhere. You know, the -- at the
21 federal level, the President can fire, as you know,
22 the Attorney General, but there is a tradition of --
23 a tradition of, you know, separateness, and that's --
24 fostering that will be harder than -- than
25 specifically changing whatever can be changed or

1 amended. But I agree it's a good place to start.

2 COUNCIL MEMBER COCKREL: -- clearer
3 sense of tradition of independence than -- than has
4 been the case in the last six years or so, and -- and
5 any advice you could provide to us, I -- I --
6 appreciate.

7 THE WITNESS: Absolutely.

8 COUNCIL MEMBER COCKREL: Thank you.

9 COUNCIL PRESIDENT COCKREL: President
10 Pro Tem.

11 COUNCIL PRESIDENT PRO TEM CONYERS:
12 Okay; thank you, Mr. President.

13 You -- when I was in the back
14 listening to you, you talked about that there's no
15 need for a Charter amendment, if I'm correct, but
16 that there needs to be -- this body needs to have
17 someone represent us when there's a potential
18 conflict other than our current general counsel; is
19 that correct?

20 THE WITNESS: No, I don't think that's
21 my view. My view is -- and -- and I -- I actually --
22 I don't know enough about how you amend the Charter,
23 but the -- the pro -- provision of your Charter that
24 permits the Mayor to fire Corporation Counsel without
25 your approval or any check, I -- I hope you can --

1 frankly, so I don't want to be on record saying I
2 don't think you need any amendments; there might be
3 some that you need.

4 COUNCIL PRESIDENT PRO TEM CONYERS:

5 Okay.

6 THE WITNESS: But I don't -- but I
7 believe that you have a lawyer who represents you,
8 it's just that it sounds to me like the tradition has
9 not been understood to be what it should be. If you
10 read the Charter, the Corp Counsel's client is the
11 City of Detroit. You are the City of Detroit. You
12 have a lawyer; it's the Law Department.

13 COUNCIL PRESIDENT PRO TEM CONYERS:

14 Right.

15 THE WITNESS: Now, the Law Department
16 might have to figure out when it can't also represent
17 --

18 COUNCIL PRESIDENT PRO TEM CONYERS:

19 The Mayor?

20 THE WITNESS: -- a constituent, and
21 the constituent that's going -- that's going to be
22 the trickiest one is going to be the Mayor, because
23 the Mayor has this ability to fire the lawyer at
24 Corporation Counsel at will. And so that -- that --
25 that particular situation going forward should be

1 resolved by the Law Department, in my view,
2 representing you and only you, and someone else
3 representing the Mayor.

4 COUNCIL PRESIDENT PRO TEM CONYERS: I
5 -- would -- okay. I just -- that's kind of what we
6 thought when you hired Ms. McPhail, that she would be
7 representing him, and they would be rep -- at least
8 that's what I thought, but okay.

9 My next question -- second question is
10 the Attorney General is the chief lawyer and law
11 enforcement officer for the United States -- for the
12 United States, and Council has been the City's chief
13 law enforcement officer for over 370 years. Do you
14 know of any cases where there is a co-attorney
15 general for legal representation for both branches of
16 government?

17 THE WITNESS: No, there -- there
18 isn't. I mean not that I know of. I know that there
19 are lots of municipalities like this one who don't
20 have resources to play with, so that the Corporation
21 Counsel will often in -- in -- in many matters that
22 come into the office, represent both the constituent
23 and the city, and like I said before, probably in 97
24 percent -- 99 percent of those matters, that won't be
25 a problem; there won't be a conflict. Hopefully,

1 most of your constituents are acting in interest of
2 the city, which is what you all are doing. So there
3 are lots of cities around the country that have the
4 same arrangement you have. When it -- it -- it's a
5 problem when push comes to shove and there's a
6 conflict, and -- and that's when this arrangement is
7 -- can be tricky.

8 If you had unlimited resources, I
9 might say do what the federal government does; the
10 President has a lot of lawyers, so -- doesn't have to
11 be his lawyer when he goes to be the United States
12 lawyer. The United States can have their lawyers,
13 the President can have their lawyers. If you had
14 unlimited resources I'd say get the Mayor a bunch of
15 his own lawyers and you have your own lawyers and get
16 the city manager, if there's such a thing, his own
17 lawyers -- well, you know what I mean. But -- but
18 that doesn't make sense in a world of limited
19 resources like the one we live in here in Detroit,
20 right?

21 COUNCIL PRESIDENT PRO TEM CONYERS: --
22 because the federal government -- the President
23 appoints and then the body just confirms. Where it's
24 the same thing here, the Mayor appoints, but they
25 have to come to us, and we have to --

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THE WITNESS: Approve it, right.

COUNCIL PRESIDENT PRO TEM CONYERS: --
approve it. So basically, we should also look at too
-- maybe (inaudible) understand that they work for us
and not just for the Mayor.

THE WITNESS: That -- that's
absolutely what -- what is -- what needs to be
understood, and that's plainly what their role is,
and yes, I --

COUNCIL PRESIDENT PRO TEM CONYERS: I
-- I just believe that when they come to us, they
don't understand that that is their role. I --

THE WITNESS: Well --

COUNCIL PRESIDENT PRO TEM CONYERS: --
based upon what's happened.

THE WITNESS: Yes.

COUNCIL PRESIDENT PRO TEM CONYERS: I
think that they think that the Mayor was just their
client and the city -- residents of the city of
Detroit, we were just secondary.

THE WITNESS: And when the Mayor has
the ability to fire you at will, that can be a
complicated role to keep in mind; that your role is
the City's lawyers, not the Mayor's lawyer.

COUNCIL PRESIDENT PRO TEM CONYERS:

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Okay.

THE WITNESS: Because you know what?
Sometimes you're going to do your job, and you're
going to get fired for it.

COUNCIL PRESIDENT PRO TEM CONYERS: I
just -- I won't ask my -- question, that's fine.
Thank you.

COUNCIL PRESIDENT PRO TEM CONYERS:
Council Member Watson.

COUNCIL MEMBER WATSON: Thank you, Mr.
President.

Thank you very much for being here.
Go Blue.

I want to ask you a question from the
Michigan Rules of Professional Conduct.

THE WITNESS: Okay.

COUNCIL MEMBER WATSON: There's a
special part that talks about governmental agencies
and responsibility of attorneys who represent
agencies, and it's clear from the whole column that
the clear responsibility of an attorney employed by a
governmental agency is to the governmental agency,
and not to the constituent, officers, or elected or
appointed (inaudible). Given that, the City Council,
which has had a history of not having the 80 members

1 of the Law Department respond to the City Council
2 legislative body as if we were the representation of
3 the city; they've responded to the executive branch,
4 but the same level of response and representation of
5 the legislative branch. We -- we really need to
6 start at ground zero in -- in addition to the
7 Charter.

8 THE WITNESS: It -- it does sound like
9 you --

10 COUNCIL MEMBER WATSON: (Inaudible)
11 based on our history and precedence, that has not
12 included things as simple as a city council president
13 signing all contracts and all agreements, because by
14 law we're held accountable for what gets spent, and
15 that's in the Charter. So, if our citizens, our
16 constituents had mandated that, we would not have had
17 the issue of having any surprise confidential secret
18 side agreements if the city council president was --
19 was a signatory on every agreement on every contract,
20 which is something in addition to (inaudible), so
21 that -- that's something we can -- we can do by law;
22 we don't have to wait for a Charter amendment
23 (inaudible).

24 THE WITNESS: Oh no, absolutely not.
25 I -- I don't believe you need a Charter amendment to

1 -- to -- to have a reeducation process and remind
2 your lawyers that they are your lawyers. You -- you
3 can tell them that right now. They are your lawyers.
4 They should act as if they are your lawyers.

5 And you're right about Rule 1.13; it
6 does in the comment section address where --
7 government agency specifically -- that rule is aimed
8 in some ways more primarily at lawyers representing
9 corporations, but the -- the lawyer who represents a
10 government agency has the same duties as a lawyer who
11 is representing a corporation and one of the board
12 members is acting in a way that's injurious to the
13 corporation. The -- the client is the city, you guys
14 are the city, and the lawyer has an obligation to
15 keep his client informed, and not act in a way that
16 conflicts the lawyer from giving the client the
17 services the client is entitled to.

18 COUNCIL MEMBER WATSON: In this
19 specific section, it talks about potential legalities
20 and responsibility of the attorney to notify its
21 ultimate client --

22 THE WITNESS: That's right.

23 COUNCIL MEMBER WATSON: -- is clear
24 under the Michigan Rules of Conduct, and this -- so
25 everyone who works for the Law Department who carries

1 a bar card has access to the Michigan Rules of
2 Professional Conduct.

3 THE WITNESS: Well, I don't know about
4 everyone who works there, but I know that -- that if
5 -- if the lawyers in that office have not come to
6 you, their client, with information that one of its
7 constituents is acting in a way that's injurious,
8 then they have a problem.

9 COUNCIL MEMBER WATSON: If in fact an
10 attorney who is not a City employee has received
11 money from the City as a contractor -- that they're
12 representing the City --

13 THE WITNESS: Yes.

14 COUNCIL MEMBER WATSON: -- for a
15 particular period of time or the tenure of a case,
16 does that mean that they must abide by the tenets of
17 the City Charter to the same degree as the long-term
18 employees?

19 THE WITNESS: Absolutely. The -- the
20 fact that the -- a private lawyer is brought into the
21 litigation through the Law Department doesn't
22 mitigate his or her ethical duties to his client.
23 His client is you, his retainer says his client is
24 you, his appearance says he is representing the City
25 of Detroit, he has the same obligations to you. It

1 doesn't matter how he is brought into the matter;
2 those are his obligations.

3 COUNCIL MEMBER WATSON: And my final
4 question; as -- as I listen to the testimony today
5 and heard a couple of representations about how the
6 first settlement agreement was rejected and -- on
7 paper --

8 THE WITNESS: Mm-hmm.

9 COUNCIL MEMBER WATSON: -- by the
10 Mayor some weeks after there was an approval by -- by
11 the legislative body, but then later it was
12 resurrected, and there came -- there came a -- there
13 was only one presentation to Council --

14 THE WITNESS: Yes.

15 COUNCIL MEMBER WATSON: -- and this
16 was the one that was ultimately rejected in writing
17 by the executive branch. There was never a second
18 agreement brought forth to the legislative body, and
19 the Mayor did not have the power to approve an
20 agreement on his own (inaudible), so there's an
21 ethical issue in my mind that I'd like you to respond
22 to --

23 THE WITNESS: Well, it sounds to me
24 there might also be a legal obligation -- I mean it
25 sounds to me like you've just raised an issue that

1 has ethical and legal implications. If -- if -- if
2 it's right that a new and improved settlement
3 agreement is drafted and this body doesn't get that
4 information and isn't given that information --

5 COUNCIL MEMBER WATSON: We never knew
6 its existence.

7 THE WITNESS: I think there's a -- I
8 think that's an ethical problem. It may --

9 COUNCIL MEMBER WATSON: (Inaudible)
10 rejected (inaudible) approved by Council; no
11 knowledge that it was rejected in order to avoid a
12 FOIA (inaudible) from the media -- then a second
13 agreement signed by the executive branch, never
14 approved, never brought to the legislative body,
15 which by law must approve all agreements.

16 THE WITNESS: And that's the legal
17 part. I mean the -- the legal part that this body
18 has to approve it from is -- is one set of issues.
19 Whether there's a -- a legal problem, a legal
20 violation, and how the lawyers handled it. But
21 separate and apart from that, there's an ethical
22 violation. It's -- it's kind of common sense, right?
23 If you are your lawyer's client, what information do
24 you want to know in making important decisions?
25 That's kind of what you're -- what you need to think

1 about. It seems to me all of this information, no
2 matter which document it ends up in, this one or this
3 one, is information you want to know in deciding yes,
4 we should stop --

5 COUNCIL MEMBER WATSON: (Inaudible)
6 nothing can be confidential from the client; there's
7 no such thing as confidentiality with respect to your
8 ultimate client.

9 THE WITNESS: Not in my view.

10 COUNCIL MEMBER WATSON: Thank you, Mr.
11 President.

12 COUNCIL PRESIDENT COCKREL: Council
13 Member Collins is next.

14 COUNCIL MEMBER COLLINS: Thank you,
15 Mr. President.

16 I -- I would clarify something,
17 because I've got the exact opposite meaning from what
18 you said. You said the constituent opposite, meaning
19 the Mayor --

20 THE WITNESS: Yes.

21 COUNCIL MEMBER COLLINS: -- in order
22 to avoid the conflict of the best interests of the
23 client, which is the City --

24 THE WITNESS: Right.

25 COUNCIL MEMBER COLLINS: -- and the

1 City Council is the body, should have their own
2 attorney, but that attorney seems to me should not be
3 responsible for disclosing confidential information
4 to the body?

5 THE WITNESS: Absolutely the Mayor's
6 attorney should not.

7 COUNCIL MEMBER COLLINS: Okay.

8 THE WITNESS: The Mayor --

9 COUNCIL MEMBER COLLINS: (Inaudible)

10 THE WITNESS: Well, if I -- if --

11 COUNCIL MEMBER COLLINS: (Inaudible)

12 THE WITNESS: I apologize, because I
13 didn't mean to say that. The Mayor's attorney, who's
14 only representing the Mayor, has no contractual duty,
15 and therefore no ethical duty to the City --

16 COUNCIL MEMBER COLLINS: Although the
17 City is paying him.

18 THE WITNESS: But that's okay. That's
19 -- you might not like it, but that's permissible
20 under the ethics rules. That -- the -- the Mayor's
21 attorney has no obligation, in fact in my view, he
22 has an obligation to do his best to keep that
23 information private, because that's what the Mayor
24 wants, that's what his client wants. He's acting in
25 his client's interests when he keeps -- but it's your

1 lawyers that you should have a --

2 COUNCIL MEMBER COLLINS: You're
3 talking about corporate counsel?

4 THE WITNESS: I'm talking about
5 corporate counsel, I'm talking about the private
6 lawyer who is retained --

7 COUNCIL MEMBER COLLINS: By us.

8 THE WITNESS: -- by you.

9 COUNCIL MEMBER COLLINS: Okay. If you
10 -- you had the same question -- okay. I just wanted
11 us to be clear on that.

12 Now, I'm going in another direction.

13 THE WITNESS: Okay.

14 COUNCIL MEMBER COLLINS: Lawyers,
15 whoever are paying them, are agents of the court.

16 THE WITNESS: Yes.

17 COUNCIL MEMBER COLLINS: And there's
18 Canons or rules of ethics that lawyers must abide by.
19 If lawyers know that there is a wrongdoing, are they
20 not obligated by the Canons to report that to the
21 judge?

22 THE WITNESS: Well, that's a really
23 good question, and I wish there was a really simple
24 answer, but there's not a simple answer. You're
25 absolutely right that one of a lawyer's ethical

1 duties is as an officer of the legal system; that's
2 how the rules -- officer of the legal system.
3 Officer of the court is just as good. And there are
4 specific rules that come into play when a client, a
5 lawyer's client, is arguably committing a fraud or
6 perjury, and those -- and those -- those obligations
7 are not as straightforward as -- as you might hope,
8 and maybe part of why lawyers get a bad name.
9 Because in -- in a case like this, if a lawyer
10 doesn't learn until after the fact --

11 COUNCIL MEMBER COLLINS: After the
12 trial?

13 THE WITNESS: After the trial, then
14 the -- then -- then in my view, the lawyer's ethical
15 obligation isn't necessarily to turn his client in.
16 In fact, it might be not to turn his client in.
17 Although I believe the lawyer is permitted to turn
18 his client in under the rules. So -- so, you know,
19 this might be why people don't like lawyers, but --
20 but I do think -- but I do think that the rules
21 aren't as straightforward as you might hope they --
22 hope they would be.

23 If a lawyer knows beforehand --

24 COUNCIL MEMBER COLLINS: Clarify in my
25 mind --

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THE WITNESS: Yes.

COUNCIL MEMBER COLLINS: As long as Mr. Stefani -- not Mr. Stefani -- Copeland, I guess, found out that the Mayor allegedly perjured himself after the trial, he's not obligated. But if he found out before the -- the trial or conviction, he's obligated?

THE WITNESS: Yeah, I think you mean Mr. McCargo, right?

COUNCIL MEMBER COLLINS: It could be.

THE WITNESS: Yeah. If Mr. McCargo --

COUNCIL MEMBER COLLINS: But the Mayor's lawyer who received the text messages --

THE WITNESS: Right.

COUNCIL MEMBER COLLINS: -- and, according to the newspapers, turned white or pale or --

THE WITNESS: Right.

COUNCIL MEMBER COLLINS: Something they said, and immediately called I think Corporation Counsel, and -- and they settled the same day or next day.

THE WITNESS: Right.

COUNCIL MEMBER COLLINS: Was that person obligated to tell the court?

1 THE WITNESS: I don't believe so. I
2 believe if -- if the Mayor's lawyer knew of the false
3 testimony issues before the trial and therefore
4 during the trial, then he would have some significant
5 ethical problems, three separate rules in my view.
6 He'd have a 3.384 problem, using false evidence; a
7 1.2(c) problem, assisting a client -- and maybe a 4.1
8 problem, truthfulness in his representation. If he
9 did not know until after the fact, the
10 confidentiality rule, 1.6(c)(3), gives him the
11 professional opportunity, but does not obligate him,
12 to reveal the information so -- to -- and I quote,
13 "rectify the situation."

14 COUNCIL MEMBER COLLINS: Okay. So --

15 COUNCIL PRESIDENT COCKREL: Council
16 Member, that's --

17 COUNCIL MEMBER COLLINS: This is the
18 same question, I just want to get one -- one complete
19 answer -- just bear with me, Mr. President.

20 COUNCIL PRESIDENT COCKREL: You are at
21 four questions.

22 COUNCIL MEMBER COLLINS: So if -- this
23 is the same question. I'm not going to ask any more.

24 So, time wise, when Mr. McCargo got
25 the text messages, the trial was over.

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THE WITNESS: Right.

COUNCIL MEMBER COLLINS: He had no obligation to divulge that?

THE WITNESS: I -- I don't believe --

COUNCIL PRESIDENT COCKREL: Even though the settlement wasn't over, the trial was over. So you don't count the settlement as part of the trial; is that it?

THE WITNESS: Well, that -- I actually think it's an interesting question, and the rule -- the specific rules I don't believe would obligate him to -- to do anything with the information. In fact, he probably feels -- his -- his confidentiality duty, he had an obligation to protect the information. And, you know, you -- he's probably thinking well, City Council has its own lawyer protecting them. They have a lawyer out there doing their job for them. So their lawyer can go do their job for them. I have to do my job for my lawyer, my -- I'm sorry, my client. My client's the Mayor. I have to protect the Mayor, and because the lawyer isn't knowingly putting on false testimony, I don't believe some of the rules that you might hope would police this kind of conduct come into play.

But, you know, that's why lawyers are

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COUNCIL MEMBER COLLINS: And Stefani -
- because he didn't --

COUNCIL PRESIDENT COCKREL: That's
your sixth question. You said one was the same
question -- so I've definitely got to stop you now.
President Pro Tem is next.

COUNCIL PRESIDENT PRO TEM CONYERS:
Thank you.

Can I ask you this question; does the
general counsel of University of Michigan represent
the University in wrongful termination suits brought
by staff against Mary Coleman (ph); is there a
conflict -- is there a conflict there?

THE WITNESS: Yeah. This is -- it's a
great -- it's a great question. The -- the general
counsel's office is -- is -- runs into 1.13 issues
just like a city corp counsel does. So, the general
counsel office, you probably know, represents the
regents; that's really who their clients are, the
regents of the University of Michigan, and every once
in a while, you could imagine, that there is
something that might be awkward for general counsel's
office to negotiate with a constituent. So when Mary
Sue Coleman's contract is up, I guarantee you general

1 counsel's office will farm that out to a private law
2 firm to negotiate with Mary Sue Coleman, because as a
3 constituent who often is the person, you know, giving
4 information and guidance and involved in discussions
5 with the general counsel's office, it might make it
6 awkward, and it puts the general counsel in a tough
7 position to negotiate in the best interests of the
8 client, and the client is the -- is the University,
9 and -- and the University is represented by the
10 regents --

11 COUNCIL PRESIDENT PRO TEM CONYERS: So
12 what --

13 THE WITNESS: So that's a situation
14 where they would have to get outside counsel.

15 COUNCIL PRESIDENT PRO TEM CONYERS: So
16 one person would represent the University, and then
17 they would farm out somebody to represent --

18 THE WITNESS: The general counsel
19 represents the University, but it -- but when it's --
20 with it's with respect to a contract with a
21 constituent, that would be an appropriate time, and a
22 time I'm sure they will, hire outside counsel. And
23 that's just one example that comes to mind. There
24 would be other examples where there would need to be
25 separate counsel for a constituent.

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COUNCIL PRESIDENT PRO TEM CONYERS:

Which is kind of similar to this situation?

THE WITNESS: Totally similar.

COUNCIL PRESIDENT PRO TEM CONYERS:

And so do -- does the board -- does the University say that the general counsel can only be fired by the Board of Regents, or the board of -- or the University says that they can be the ones that fire the general counsel --

THE WITNESS: The general counsel?

COUNCIL PRESIDENT PRO TEM CONYERS: -- as opposed to the Board of Regents?

THE WITNESS: Well, no. Like you -- like you, it's -- I know the president hires the -- the president of the University hired the general counsel; I don't know off the top of my head how the general counsel can be fired. I -- I just don't know. But the general -- but the general -- but the president hires the general counsel, so just like in a small city with limited resources, some of these issues are lurking in the background, and lawyers have to be on top of them. That's why you need checks; that's why you need conflicts checks and risk management systems, so lawyers can be on top of where the conflicts are going to come to a level that

1 they're going to make a difference in the services --
2 provide its real client.

3 COUNCIL PRESIDENT PRO TEM CONYERS:
4 And you would give them the same advice that you're
5 giving us?

6 THE WITNESS: Absolutely.

7 COUNCIL PRESIDENT COCKREL: Thank you,
8 Mr. President.

9 COUNCIL PRESIDENT COCKREL: Council
10 Member Cockrel is next.

11 COUNCIL MEMBER COCKREL: Thank you.

12 And my question -- that Member Collins
13 was raising about who knew what about the text
14 messages when --

15 THE WITNESS: Right.

16 COUNCIL MEMBER COCKREL: We had
17 testimony today that -- I guess it was McCargo -- Mr.
18 McCargo representing the Mayor, paid for by the City
19 of Detroit, had -- somebody had filed motions to --
20 to keep them out of the case.

21 THE WITNESS: Yes.

22 COUNCIL MEMBER COCKREL: Would it --

23 THE WITNESS: To quash the subpoena,
24 yes.

25 COUNCIL MEMBER COCKREL: Would it be

1 logical to assume that at that point somebody earlier
2 on -- had knowledge of what was in the messages,
3 because why would you want to get them out of the
4 case if you didn't know they were damaging?

5 THE WITNESS: I -- I -- I don't know
6 how to speculate on it. It -- it's certainly
7 possible that someone had information -- enough
8 information about what was in the text messages to be
9 worried about them. But what information they had
10 and whether it was as damaging as it sounds like it
11 has turned out to be, we would -- we would just be
12 guessing.

13 COUNCIL MEMBER COCKREL: That's a
14 question --

15 THE WITNESS: But you might -- but --
16 but it's probably worth pursing.

17 COUNCIL MEMBER COCKREL: (Inaudible)
18 general counsel -- one of the things that I think
19 really needs to be looked at because our Charter does
20 not contain a position called general counsel; the
21 white book which is where all positions in city
22 government are listed does not contain a position
23 called general counsel. It was a title conferred by
24 Mayor Kilpatrick the first -- attempted in the first
25 term to (inaudible) Council said -- objected and it

1 didn't happen. Second term it was a title that was
2 given to Ms. McPhail. But the reason I think it's an
3 important issue is because when whatever it is that
4 position was doing recently, Mr. Kilpatrick's office,
5 at the point in time that Ms. McPhail was involved in
6 this matter, it's my understanding she had to be
7 appointed or designated by Mr. Johnson as an
8 assistant corporation counsel -- to participate in
9 the dep of Mr. Stefani -- this is a whole set of
10 conditions about that position -- if it's going to
11 exist, we need to figure out what its -- what its
12 organizational status is and what its legal status is
13 -- in my view this Charter it is not contemplated as
14 a separate and distinct position might be something
15 we ought to look at, but as this Charter is currently
16 constructed, it's not there.

17 THE WITNESS: Yeah, I understand. I -
18 - I actually wasn't even aware that that was the
19 understanding of Ms. McPhail's position. I didn't
20 understand that she was general counsel to the Mayor
21 and not a member of the Corp Counsel's office. I did
22 not understand that. So it sounds like you already
23 have separate counsel for the Mayor --

24 COUNCIL MEMBER COCKREL: At one point
25 --

1 THE WITNESS: You're already spending
2 a bunch of money on that, but you still can't get
3 your own lawyers --

4 COUNCIL MEMBER COCKREL: At one point
5 the structure of city government of -- under Mr.
6 Kilpatrick was that Corporation Counsel of the City
7 of Detroit was reporting to the special counsel which
8 (inaudible) government, and even now it's my
9 understanding that under this Mayor's organizational
10 chart, the Corporation Counsel of the City of Detroit
11 reports to the Deputy Mayor, which I think is a
12 straight up violation of this Charter. Thank you.

13 COUNCIL MEMBER KENYATTA: -- Pro Tem,
14 and thank you for your patience in being here since
15 9:00 o'clock this morning. Thank you.

16 I -- I'm going to ask a question and
17 kind of feel my way through it as well, and kind of
18 ask you your perception of how these documents was
19 presented to City Council and what you would have
20 gotten out of them.

21 What were you told today and all the
22 documentation tells us that there was a management on
23 October the 17th, and at that particular meeting,
24 there was a -- a envelope that precipitated a
25 settlement. Mr. Copeland said that it was the Harris

1 -- the fact that Mr. Harris' name was in that
2 document. The judge said that clearly there would
3 have been no settlement without the Confidentiality
4 Agreement and the text messages. I think you may
5 have said the same thing here. Mr. -- Mr. Copeland
6 said it was kind of just all of our perception that
7 that's why this thing was settled. However, whatever
8 happened, sometime that night, a handwritten
9 agreement became a written agreement called
10 Settlement Agreement. Sometime that night, I got a
11 call from Mr. Johnson saying we got an agreement; can
12 we bring that to the meeting on the 18th, which was
13 the next day, and we said fine, good.

14 Now, we had what's called a Settlement
15 Agreement, which is exhibit eleven, that a number of
16 people signed, including Mr. Copeland and other
17 attorneys. When they got to the meeting on the 18th,
18 what we had before us was the law -- and this is
19 under tab number four, the Lawsuit Settlement
20 Memorandum, which one could only assume is based upon
21 the Settlement Agreement, and that outlines a number
22 of different things, including the money involved.

23 Under tab number five -- and of course
24 this is -- and that was on October the 23rd that that
25 memorandum was reduced to writing that kind of

1 outlined and summarized what we felt was a settlement
2 agreement. The Settlement Agreement as it is written
3 here was not presented to us. We -- we didn't know
4 about that.

5 However, it became public on October
6 the 27th, when the Mayor publicly in court gave a
7 notice of rejection of the proposed settlement terms
8 rising out of the October 17th facilitation, which we
9 believe was what we approved on October the 23rd. So
10 now the Mayor then rejected, and I think Member
11 Watson brought this in -- in I think in more -- some
12 consideration. The Mayor then rejected what Council
13 approved on the -- on the 18th and -- and filed that
14 in court on the 27th. Then on the -- November the
15 1st, the Mayor then gave a notice from Mayor Kwame
16 Kilpatrick approval of terms and conditions of
17 settlement, as approved by Council on October the
18 27th.

19 What do you make of this? It seems
20 like some kind of -- well, I don't want to
21 characterize what it seems like until after I get an
22 answer from you. How -- who -- was -- how do you --
23 what do you make of this once you see this all
24 together here?

25 THE WITNESS: Well, I -- it -- it's -

1 - I think it's awkward for your lawyers to explain
2 it, is what I see. I don't know how -- and I
3 actually would take it back a few weeks, how you get
4 the advice in late September that you shouldn't
5 settle this case unless it's for an awfully, awfully,
6 awfully, you know, good figure, to a memorandum, but
7 not the agreement that they had drafted; why they
8 don't bring that to your attention. And then why
9 apparently you're not -- it's not -- it's never
10 explained to you why the Mayor rejects and then
11 accepts this agreement; all because there is
12 information that the Mayor wants no one to find out
13 about, including you. I think it's -- it's awkward
14 for your lawyers to say that none of that matters.

15 COUNCIL MEMBER KENYATTA: Let -- let
16 me just -- Madame President Pro Tem, that -- that
17 clearly this is awkward. That the Settlement
18 Agreement which we never saw, but the settlement
19 memorandum, which we did see and approve, and then
20 the re -- notice to reject -- I should point out, we
21 never saw that either.

22 COUNCIL MEMBER WATSON: Right.

23 COUNCIL MEMBER KENYATTA: That was
24 never presented to the Internal Operations Committee,
25 nor was it ever presented to Council. We found out

1 about it later; I think it was one of the -- one of
2 these exhibits, that we found out later that that had
3 been presented in court --

4 THE WITNESS: Yes.

5 COUNCIL MEMBER KENYATTA: -- that the
6 Mayor rejected what Council had approved --

7 THE WITNESS: Had it been presented,
8 you might have had some questions for your lawyers --

9 COUNCIL MEMBER KENYATTA: And then --

10 THE WITNESS: -- those questions for
11 your lawyers --

12 COUNCIL MEMBER KENYATTA: (Inaudible)
13 reapproved it later on. So, I -- I really don't know
14 what to make of that. But as you put all of that
15 together, there seems to be some slight of documents
16 -- meaning slight of hand kind of thing that went on
17 there. Thank you.

18 COUNCIL PRESIDENT PRO TEM CONYERS:
19 Council Member Alberta Tinsley-Talabi.

20 COUNCIL MEMBER TINSLEY-TALABI: Thank
21 you, Madame President Pro Tem, and thank you Ms.
22 McCormack for being here.

23 THE WITNESS: Sure.

24 COUNCIL MEMBER TINSLEY-TALABI: You
25 heard Mr. Copeland, and I'm just wondering if you

1 worked for me, can you give me your take on his
2 testimony?

3 THE WITNESS: Sure. I -- I feel badly
4 for Mr. Copeland. I think he's in a difficult
5 position. I think he's got a impossible problem to
6 explain to his client, you're his client; I don't
7 know how he explains what Mr. Kenyatta was just
8 asking me about and all of the rest of these facts.
9 I -- I guess the best explanation he can come up with
10 was he thought they were all irrelevant, and if
11 they're all irrelevant, they don't need to come to
12 you in figuring out how to settle the case, and that
13 there were separate reasons for settling this case
14 that had nothing to do with the Confidentiality
15 Agreement, which frankly, might be right. I don't --
16 I don't need to be saying that you wouldn't have come
17 to the same conclusion if you had all the information
18 before you.

19 It doesn't however, answer your
20 question -- this body's question -- about why you
21 weren't able to figure all that out for yourselves.
22 Why you weren't given that information so you could
23 sort it out. You're the boss, you're the client,
24 you're supposed to be the one who -- with the
25 information, deciding what to do with it. You may

1 well have decided that the lawyers were making the
2 right call. But you may not have decided that. I
3 don't know what you would have decided. You may have
4 thought we don't have an interest anymore in keeping
5 this information private. We're going to throw the
6 Mayor under the bus. I'm not saying it should be
7 that; I'm not saying that's a good idea. I'm saying
8 you have a different role than the Mayor, and so
9 protecting the Mayor's privacy isn't necessarily your
10 first obligation. And so it might not motivate you
11 in a settlement the way it would motivate the Mayor.
12 And so, even if you would come to the same
13 conclusion, you have a right to that information to
14 sort it out. I think Mr. Copeland is in a -- an
15 impossible position in trying to explain how -- how
16 you didn't get that information.

17 COUNCIL MEMBER TINSLEY-TALABI:

18 (Inaudible) Mr. Stefani, towards the end of his
19 testimony, tried to implicate or (inaudible) except
20 for how do we move forward (inaudible); did you hear
21 him?

22 THE WITNESS: I did hear that.

23 COUNCIL MEMBER TINSLEY-TALABI: I
24 absolutely disagree with that, and I'd like to know
25 how you feel, because I think some of the information

1 (inaudible) chose not to answer really deserves an
2 answer.

3 THE WITNESS: Well, let me say, I was
4 here only for I think the last hour and a half or two
5 hours of his testimony, so I don't -- I don't -- I
6 can't, you know, comment on a whole -- on all of his
7 testimony. But I agree with you. Your question
8 about your lawyers, their role, what you were told,
9 when you were told it, what you had a right to be
10 told, what can expect to be told going forward, are
11 very important questions. I don't doubt that the
12 questions about the police department and -- and --
13 and moving that forward are also important. But --
14 but -- but certainly this is an opportunity for this
15 body to sort out how to get better representation
16 from its lawyers. I don't -- I don't see how those
17 questions are irrelevant or not important.

18 COUNCIL MEMBER TINSLEY-TALABI: Thank
19 you.

20 COUNCIL PRESIDENT PRO TEM CONYERS:
21 Okay. Council Member Reeves, followed by Council
22 Member Watson and Council Member Kenyatta and
23 Collins.

24 COUNCIL MEMBER REEVES: Thank you
25 Madame Chair.

1 Is it the practice of the Council to -
2 - as we hired a outside counselor to approve of the
3 contracts for the representation of the Mayor; is
4 that part of our duty, or is that something that is
5 supposed to happen? Because if we have hired or
6 interviewed the lawyers that are on the case, maybe
7 we would have more of a rapport with them, or they
8 would have come here and give us -- is that the duty
9 of the City Council, to hire the counselors that
10 represent us --

11 COUNCIL PRESIDENT PRO TEM CONYERS:
12 Mr. Whitaker?

13 MR. WHITAKER: I -- I -- the Charter
14 gives the responsibility for hiring outside counsel
15 to the Law Department. Corporation Counsel has that
16 duty and right. But the approval of the con --
17 contract ultimately is this body's responsibility.
18 But the actual engagement is the Law Department.

19 COUNCIL MEMBER REEVES: And -- and one
20 more question. How many of the Law Department's --
21 that you mentioned earlier are actual lawyers?

22 THE WITNESS: All of them.

23 COUNCIL MEMBER REEVES: All of them?
24 Okay, thank you.

25 COUNCIL PRESIDENT PRO TEM CONYERS:

1 Council Member Watson.

2 COUNCIL MEMBER WATSON: Thank you --

3 The City of Detroit approved seven
4 years ago an ethics commission. So we have an ethics
5 office. And it's got a wonderful director and -- but
6 I'm deeply concerned -- with all the ethical issues
7 that have emerged in the -- in the recent months that
8 an ethics violation filed by citizens with respect --
9 was addressed by the ethics commission and they
10 determined formally that they had -- wait until the
11 Wayne County Prosecutor had made a determination or
12 finding before they could do anything. Since clearly
13 (inaudible) resume, you just have a wonderful
14 history, NYU, Yale, University of Michigan
15 (inaudible) areas around this world, it's a pleasure
16 to have you here, but you're here basically because
17 of your ethics expertise. A city as large as Detroit
18 should have been able to depend on our own ethics
19 commissions, a Charter by our citizens, which has a
20 board, albeit that board if conflicted, because
21 they're all appointed by the Mayor. That's just
22 another Charter issue.

23 But technically, an ethics body powers
24 within a municipality should be in a position to
25 address these kind of ethical issues without having

1 to bring in an outside expert or even outside
2 counsel.

3 THE WITNESS: I -- that -- that -- I
4 think that sounds good to me. You'll have to take
5 that up with Mr. Goodman. I don't know; he dragged
6 me down here.

7 COUNCIL MEMBER WATSON: Are you aware
8 of the -- the role of ethics commissions -- ethics
9 bodies within municipalities or within institutions -
10 -

11 THE WITNESS: I mean I -- I --

12 COUNCIL MEMBER WATSON: -- as a more
13 aggressive, definitive role they play to protect the
14 interests of the citizens?

15 THE WITNESS: I'm actually not, and
16 I'm interested in it. I didn't even know there was
17 such an ethics commission in the City of Detroit. I
18 am a -- I am familiar with ethics officers in law
19 firms and government lawyers offices, the United
20 States Attorney's office has an assigned ethics
21 officer --

22 COUNCIL MEMBER WATSON: And I -- I
23 made an error. City Council does some appointments.
24 The Mayor does some appointments.

25 THE WITNESS: Okay. So it's a

1 combined -- and I don't know, is it a -- is it a --
2 is it made up of lawyers, this ethics office?

3 COUNCIL PRESIDENT PRO TEM CONYERS:
4 Not all of them.

5 THE WITNESS: Not all? Some -- some
6 lawyers, some non-lawyers?

7 COUNCIL PRESIDENT PRO TEM CONYERS:
8 Yes.

9 COUNCIL MEMBER COCKREL: Because the
10 ethics -- the person who heads the office is a lawyer
11 --

12 THE WITNESS: And what is their --

13 COUNCIL MEMBER WATSON: She's -- she's
14 -- and she's --

15 COUNCIL PRESIDENT PRO TEM CONYERS:
16 (Inaudible)

17 COUNCIL MEMBER WATSON: She's what?

18 THE WITNESS: And what is their
19 charge? What's the office's charge?

20 COUNCIL MEMBER WATSON: According to
21 the Charter, and the citizens had to vote for this --
22 they are to monitor and review ethics complaints --

23 THE WITNESS: From -- from citizens?

24 COUNCIL MEMBER WATSON: -- as it
25 relates to the official acts of officials with the

1 City or -- to those persons associated with the City.

2 THE WITNESS: So it could be legal

3 ethics violations or other ethics --

4 COUNCIL MEMBER WATSON: That's

5 correct.

6 THE WITNESS: -- violations? Right.

7 COUNCIL MEMBER WATSON: Okay. I just

8 wanted to note that --

9 THE WITNESS: No, it's interested --

10 it's interesting --

11 COUNCIL MEMBER WATSON: Thank you so

12 much for being here.

13 THE WITNESS: Sure.

14 COUNCIL PRESIDENT PRO TEM CONYERS:

15 Council Member Kenyatta.

16 COUNCIL MEMBER KENYATTA: Thank you,

17 Vice President Pro Tem. Just two final last

18 questions.

19 I think Member Watson was being very

20 nice. Let me ask this question as a follow-up to

21 hers. If the president of the ethics committee was

22 also the chair of the Mayor's fundraiser involving in

23 this case, would you see that as some form of

24 conflict of interest?

25 THE WITNESS: That -- that doesn't

1 sound like an ideal --

2 COUNCIL MEMBER KENYATTA: I mean would
3 I as a citizen feel very comfortable going to that
4 body with the chair of the ethics committee being the
5 chair of the Mayor's fundraiser involving in a
6 particular case?

7 THE WITNESS: I -- I can't imagine you
8 would encourage complaints that have the Mayor on the
9 other side of them, and that seems counter-productive
10 in --

11 COUNCIL MEMBER KENYATTA: Okay.
12 Finally, just this; let's say that I am an attorney
13 who appeared here today and was one that was involved
14 in the case. If I came here today and said yes, I'm
15 aware of the Confidentiality Agreement, I was aware
16 of it, I'm aware of the text messages and the
17 damaging effects of those text messages, and I did
18 not bother to alert Council, my clients, of that, and
19 I'm aware that there's a tenure commission
20 investigating that, would I be putting myself in some
21 form of jeopardy if I testified here today that yes,
22 the text messages was important, yes I'm aware that
23 they existed, no I didn't inform my clients that --
24 that there was a safety deposit box with them in it,
25 and would I be jeopardizing myself if I testified in

1 the affirmative here today?

2 THE WITNESS: I -- I think you might
3 well be, and I think that for that reason, I give Mr.
4 Copeland a lot of personal credit for being willing
5 to show up here and answer your questions, because he
6 -- if he asked a lawyer, a lawyer probably would have
7 advised him not to. And so on a personal level, I
8 give him a lot of credit for -- for doing that.

9 COUNCIL MEMBER KENYATTA: I give him
10 credit, but he did not -- he did not testify to that
11 --

12 THE WITNESS: Well, whether --

13 COUNCIL MEMBER KENYATTA: --
14 affirmation.

15 THE WITNESS: Oh, that's a good point,
16 but --

17 COUNCIL MEMBER KENYATTA: All right,
18 thank you.

19 COUNCIL PRESIDENT COCKREL: All right.
20 Council Member Collins?

21 COUNCIL MEMBER COLLINS: Thank you,
22 Mr. President.

23 (Inaudible) Mr. McCargo -- we are not
24 Mr. McCargo's client, the Mayor is his client.

25 Mr. GOODMAN: That's correct.

1 COUNCIL MEMBER COLLINS: Mr. Copeland,
2 we are his client?
3 MR. GOODMAN: That's correct.
4 COUNCIL MEMBER COLLINS: How is that -
5 - how is that possible? We didn't hire --
6 COUNCIL PRESIDENT PRO TEM CONYERS:
7 Yes, we did.
8 MR. GOODMAN: There was --
9 COUNCIL MEMBER COLLINS: Well, could
10 you explain --
11 MR. GOODMAN: Yes. Yes. He was hired
12 by the Corporation Counsel, and his scope of services
13 provision in his contract says that he is to
14 represent the interests of the City of Detroit.
15 COUNCIL MEMBER COLLINS: Okay.
16 MR. GOODMAN: Which means --
17 COUNCIL MEMBER COLLINS: Okay.
18 MR. GOODMAN: -- according to our
19 witness --
20 COUNCIL MEMBER COLLINS: That's --
21 MR. GOODMAN: -- you --
22 COUNCIL MEMBER COLLINS: -- why I was
23 confused. So he's not the Mayor's lawyer?
24 MR. GOODMAN: No, no.
25 COUNCIL MEMBER COLLINS: He's the

1 City's lawyer?

2 MR. GOODMAN: Yes, right.

3 COUNCIL MEMBER COLLINS: (Inaudible)

4 MULTIPLE SPEAKERS: (Inaudible)

5 COUNCIL MEMBER COCKREL: He asked our
6 permission to waive attorney/client privilege. What
7 a joke.

8 COUNCIL PRESIDENT COCKREL: Because
9 what --

10 THE WITNESS: He was not ambiguous
11 about --

12 COUNCIL MEMBER COLLINS: (Inaudible)
13 the Mayor's lawyer had an obligation (inaudible).

14 MR. GOODMAN: No. I believe she was
15 talking about Mr. McCargo.

16 THE WITNESS: I was, yes.

17 COUNCIL MEMBER COLLINS: McCargo?
18 Okay. Thank you very much. And (inaudible) --

19 THE WITNESS: You're welcome.

20 COUNCIL PRESIDENT COCKREL: Council
21 Member Cockrel.

22 COUNCIL MEMBER COCKREL: Thank you. I
23 just want to make a point on the ethics commission;
24 that it took a very long time to get the ethics
25 ordinance done. The basic framework of the ethics

1 ordinance in my opinion is the issue of private using
2 -- is private gain, and it doesn't necessarily go as
3 broadly as this, and just, you know, it should also
4 be noted that the chair of the ethics commission is a
5 joint appointment by the Mayor and the Council
6 together, who is involved with this whatever it's
7 called now, legal defense fund, recused himself on
8 this -- the complaint against the Mayor prior to this
9 justice fund being set up. So I just think it's
10 important to make that record as well.

11 COUNCIL PRESIDENT PRO TEM CONYERS:

12 The Charter doesn't say they have to be lawyers --

13 COUNCIL MEMBER WATSON: -- conflict.

14 COUNCIL PRESIDENT COCKREL: That's
15 true.

16 COUNCIL MEMBER WATSON: It's a
17 conflict.

18 COUNCIL PRESIDENT COCKREL: More
19 questions? One -- one at a time please -- all right.
20 If there are no further questions -- then Mr.
21 Goodman, did you have any final questions?

22 MR. GOODMAN: I do have a few, and I
23 really want to --

24 COUNCIL PRESIDENT COCKREL: And I hope
25 -- few.

1 MR. GOODMAN: Yes. I'm very
2 appreciative --

3 COUNCIL PRESIDENT COCKREL: Due to the
4 lateness of the house.

5 MR. GOODMAN: -- of the fact that our
6 court reporter has been working -- going -- anyway,
7 ten hours at least, at this, and I just have one or
8 two, if I may.

9 BY MR. GOODMAN:

10 Q One is this; when there is a conflict perceived in
11 terms of -- of a lawyer's client within the City Law
12 Department, is it possible for the City Law
13 Department to have one staff member of the Law
14 Department represent let us say the City of Detroit,
15 and another one represent let us say the Mayor, and
16 create was has not -- I don't know if this is an
17 appropriate term or not, but a Chinese wall between
18 the two, so that there's no communication with regard
19 to matters around -- that litigation between the two
20 of them. Is that a possibility?

21 A It is a possibility, and it's done in some
22 corporation counsel offices around the country. I
23 personally don't recommend it. But it's -- it is --
24 it is a possibility.

25 Q And just briefly, why don't you recommend it?

1 A Well, for the reason that you might expect. I mean
2 you -- walling off one lawyer or one section of
3 lawyers in the office is not always as effective as
4 one might hope it would be, and it's not always
5 possible to expect that lawyers who for the most part
6 work as colleagues and work together can really
7 represent clients if they're interests are reversed
8 in a way that gives each client the zealous
9 representation that it needs and deserves, and so
10 that even -- I think the level of services can be
11 somewhat diminished, on both ends potentially, in a
12 way that might not be ideal. Having said that, in a
13 world of limited resources, it might be something
14 people think about, so I don't -- I don't mean to say
15 it's impossible.

16 Q Now, secondly, you and I have both, I believe, worked
17 in the city of New York, and I don't know if you're
18 familiar with how the City of New York -- structured
19 government City of New York deals with settlements of
20 cases, but I am, and I believe that the -- the
21 council typically -- what they call the city council
22 in New York does not get involved in the consent and
23 approval of settlements. What happens is these are
24 recommended by the law department, which is the -- an
25 arm of the mayor's office, more so than here, and the

1 check on that is the comptroller general within the
2 City of New York, and the -- once it is signed off by
3 -- by the law department and then the comptroller
4 general, it is -- it is a binding and legal
5 settlement. In this case, given the fact that there
6 is -- there are Charter responsibilities on this
7 Council, both consent and approve of the settlement,
8 are the obligations of -- of the Corporation Counsel
9 to fully advise, fully inform, and fully notify this
10 body, even more important and of greater -- greater
11 sensitivity?

12 A I believe those issues are even more acute,
13 absolutely.

14 MR. GOODMAN: Mr. President, I think
15 that -- oh, one last thing. This is not -- I guess
16 it is a question. Could you summarize your
17 recommendations briefly in -- in written form, so
18 that I can attach it to a report which I ultimately
19 have to write and present to this body?

20 THE WITNESS: I -- I will be happy to
21 do that later -- later this week.

22 MR. GOODMAN: Well, I want -- it -- it
23 need not be that quickly, because --

24 THE WITNESS: Okay.

25 MR. GOODMAN: -- I can assure you my

1 report is not going to be done that quickly --

2 THE WITNESS: Okay.

3 MR. GOODMAN: -- but I really --

4 again, on behalf of myself and this body, I want to
5 thank you for your --

6 THE WITNESS: Absolutely.

7 COUNCIL PRESIDENT PRO TEM CONYERS:

8 Thank you for coming.

9 THE WITNESS: Thank you.

10 COUNCIL PRESIDENT COCKREL: Thank you
11 very much, Dr. McCormack.

12 COUNCIL MEMBER WATSON: Let the record
13 reflect this is the only witness who got applause.

14 COUNCIL PRESIDENT COCKREL: Okay.

15 Before we adjourn, I do need to ask for public
16 comment. So, are there any members of the public
17 that would like to address Council at this time?

18 COUNCIL PRESIDENT PRO TEM CONYERS:

19 They're all gone.

20 COUNCIL PRESIDENT COCKREL: Once
21 again, any members of public? Seeing none, this
22 committee will rise.

23 (WHEREUPON, at 7:12 p.m., legislative
24 hearing concluded)

25

STATE OF MICHIGAN)
) SS
COUNTY OF OAKLAND)

I HEREBY CERTIFY that this transcript, consisting of three hundred sixty-two (362) typewritten pages, is a complete, true, and correct record of the legislative hearing held on April 8, 2008.

Deanna L. Harrison

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